1 2 3 4 5 6	TIM WARD TULARE COUNTY DISTRICT ATTORNEY NADYA HANNAH, DEPUTY DISTRICT ATTOR SBA#284897 221 S. MOONEY BLVD., ROOM 224 VISALIA, CA 93291 TELEPHONE: (559) 636-5494 FAX: (559) 730-2658 Attorneys For Real Party In Interest	TULARE COUNTY SUPERIOR COURT VISALIA DIVISION NEY JAN 07 2019 STEPHANIE CAMERON, CLERK BY:		
7	Thiomeyer or real raily in mission			
8	TULARE COUNTY	SUPERIOR COURTS		
9	STATE OF CALIFORNIA, VISALIA DIVISION			
10	In Re SEARCH WARRANT #013487	CASE NO:		
11	YORAI BENZEEVI,			
12	Moving Party,	REQUEST FOR JUDICIAL NOTICE		
13	v.			
14 15	SUPERIOR COURT OF THE COUNTY OF TULARE,	Date: January 22, 2019 Time: 8:30 am		
16	Respondent,	Dept: 13		
17	TULARE COUNTY DISTRICT ATTORNEY,			
18	Real Part in Interest.			
19				
20				
21	TO THE COURT AND THE DEFI	ENDANTS by and through their attorney of		
22	record, the People of the State of California request this court to take judicial notice of the			
23	follow documents and evidence pursuant to Evidence Code §452(d) and Evidence Code §453.			
24	Certified copies of the follow documents are held in evidence and will be offered at the			
25	hearing, provided that both parties stipulate to use, instead, the copies attached to this request.			
26		support of Healthcare Conglomerate		
27	Associates, LLC's opposition to Motion for Autho	mzanom to reject executory contract.		
28				
	REAL PARTY IN INTEREST'S F	RESPONSE TO SURREPLY		

(Exhibit #65 of People's discovery exhibits). A copy of this document is attached hereto and incorporated herewith as Exhibit 1.

- 2. Doc 89 Exhibits to the Declaration of Yarai Benzeevi in opposition to Debtor's motion to reject executory contract (Exhibit #66 of People's discovery exhibits). A copy of this document is attached hereto and incorporated herewith as Exhibit 2.
- 3. Doc 90 Exhibits to the Declaration of Yarai Benzeevi in opposition to Debtor's motion to reject executory contract (Exhibit #67 of People's discovery exhibits). A copy of this document is attached hereto and incorporated herewith as Exhibit 3.
- 4. Doc 92 Exhibits to the Declaration of Yarai Benzeevi in opposition to Debtor's motion to reject executory contract (Exhibit #68 of People's discovery exhibits). A copy of this document is attached hereto and incorporated herewith as Exhibit 4.
- 5. Doc 296 Declaration of Yarai Benzeevi in response to the motion for authorization to reject executory contract (Medflow, PC) (Exhibit #69 of People's discovery exhibits). A copy of this document is attached hereto and incorporated herewith as Exhibit 5.
- 6. Doc 54 Declaration of Alan Germany in support of Healthcare Conglomerate Associates, LLC's opposition to motion for partial summary judgment on sixth claim for declaratory relief (Exhibit #70 of People's discovery exhibits). A copy of this document is attached hereto and incorporated herewith as Exhibit 6.
- 7. Doc 55 Declaration of Yorai Benzeevi in support of Healthcare Conglomerate Associates, LLC's opposition to Motion for partial summary judgment on sixth claim for declaratory relief (Exhibit #71 of People's discovery exhibits). A copy of this document is attached hereto and incorporated herewith as Exhibit 7.
- 8. Doc 191 Declaration of Alan Germany in support of the opposition of Southern Inyo Healthcare District to Motion for relief from stay and/or alternative relief (Exhibit #72 of People's discovery exhibits). A copy of this document is attached hereto and incorporated herewith as Exhibit 8.
- 9. Doc 488 Declaration of Yorai Benzeevi in support of Motion to disqualify Ashley M. McDow and Foley & Lardner as Attorneys for Debtor (Exhibit #73 of People's discovery exhibits). A copy of this document is attached hereto and incorporated herewith as Exhibit 9.

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10. Doc 490 Exhibits in support of Motion to disqualify Ashley M. McDow and Foley & Lardner as Attorneys for Debtor (Exhibit #74 of People's discovery exhibits). A copy of this document is attached hereto and incorporated herewith as Exhibit 10.

WHEREFORE the People request this Court take notice of them as requested.

Respectfully submitted this 7th day of January, 2019.

Dated: January 7, 2019

Respectfully submitted,

TIM WARD DISTRICT ATTORNEY

NADYA HANNAH DEPUTY DISTRICT ATTORNEY

EXHIBIT 1

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2	MARC A. LEVINSON (STATE BAR NO. 5761 malevinson@orrick.com	3)
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13		
14	Attorneys for Healthcare Conglomerate Associat	es, LLC
15		
16	UNITED STATES	DISTRICT COURT
17	EASTERN DISTRICT OF CAL	JIFORNIA, FRESNO DIVISION
18	In re: TULARE LOCAL HEALTHCARE	Case No. 17-13797-9-B Chapter 9
19	DISTRICT dba TULARE REGIONAL MEDICAL CENTER,	DC No.: WW-1
20	WEDICKE CERTER,	
21	Debtor.	DECLARATION OF YORAI (BENNY) BENZEEVI, M.D. IN SUPPORT OF
22		HEALTHCARE CONGLOMERATE ASSOCIATES, LLC'S OPPOSITION TO MOTION FOR AUTHORIZATION
23		TO MOTION FOR AUTHORIZATION TO REJECT EXECUTORY CONTRACT
24		
25		Date: October 19, 2017 Time: 2:00 p.m.
26		Place: 2500 Tulare Street Fresno, CA 93721
27		Judge: Hon. René Lastreto II
28		

I, Yorai (Benny) Benzeevi, M.D., declare:

- 1. I am the Managing Member of Healthcare Conglomerate Associates, LLC ("HCCA"). HCCA is a California Limited Liability Company with its principal place of business in Los Angeles and is the Manager of debtor Tulare Local Healthcare District dba Tulare Regional Medical Center ("District" or "TRMC"). I have overall responsibility for the management of HCCA. Prior to HCCA serving as Manager to the District, I served as Director of the Emergency Department at TRMC from 2007 until January 2014. I received my medical degree at the University of California, Davis and I am board certified by the American Board of Emergency Medicine and I hold the status of Fellow of the American College of Emergency Medicine. Based on the foregoing positions, I have extensive knowledge of the District and its governance and operations, HCCA's contracts and the performance thereunder, and the relationship between the District and HCCA. I make this declaration in support of HCCA's opposition to the debtor's Motion to Reject Executory Contract (Healthcare Conglomerate Associates, LLC).
- et seq. of the California Health and Safety Code. The District's bylaws, a true and correct copy of which are attached hereto as **Ex. 1**, provide that its Board be comprised of five elected directors. On January 10, 2014, HCCA began managing the District on an interim basis and on May 29, 2014, HCCA and the District entered into the Management Services Agreement ("MSA"), which is currently in effect. A true and correct copy of the MSA is attached hereto as **Ex. 2**. Both the interim agreement and the MSA were approved by a 5-0 vote of the District Board. The District has moved to reject its four interrelated and phased contracts with HCCA: the MSA; the Interim Joint Operating Agreement ("IJOA"); the Joint Operating Agreement ("JOA") and the Operating Agreement ("OA"). The MSA governs the current relationship of the District and HCCA. The JOA provides for a joint venture arrangement between the District and HCCA to become effective upon the settlement of the revenue bonds. The IJOA addresses the interim period prior to the effective date of the JOA. The OA gives HCCA an option to purchase or lease District property under specified circumstances.

3. Under the MSA, the District appointed HCCA as manager of the District for an initial 15 year term, with a renewal period of 10 years unless either party declined renewal. In the MSA, the District acknowledged that the long-term nature of the MSA and its limited termination provisions were a substantial inducement to HCCA in agreeing to contract with the District.

Ex. 2, MSA, Section 2(a)-(b). Given the truncated tenures of multiple prior managers with which the District found fault, HCCA's management was unwilling to make the long-term investment in the District required under the HCCA without such a long-term contract.

- 4. The MSA granted HCCA the exclusive right and responsibility to manage the Hospital, clinics and other facilities of the District, "includ[ing] but not limited to financial and operating systems management, preparation of proposed annual budgets, purchasing, contracting support and relationship management, expansion of the Hospital and the Clinics and Other Facilities or the Service offered, preparation and implementation of staffing plans, recruiting of personnel, and supervision of the day-to-day operation of the Hospital, and the Clinics and other facilities." Ex. 2, MSA, Section 3.
- 5. The District is contractually required to "furnish [HCCA] with sufficient funds to timely pay the expenses relating to the District's Operations, including both operating and non-operating expenses" of the Hospital. Ex. 2, MSA, Section 3(b)(iii). HCCA may, but is not required to, advance funds to the District to fund operational costs. If HCCA advances funds, the MSA provides it with contractual means to secure repayment.
- 6. In my roles with the District, described above, I became aware that the District suffered severe financial, managerial, and governance difficulties in the years leading up to the engagement of HCCA as the manager of the District. Over the seven-year period prior to 2014, the District employed six different Chief Executive Officers and at least a half dozen Chief Financial Officers. During that time, the District suffered severe and progressively worsening financial losses, namely, over \$4 million in the immediately preceding six months; over \$8 million in the immediately preceding fiscal year; over \$16 million in the prior three fiscal years; and a combined loss of just under \$5 million in the preceding ten-year period. The Hospital's operating margin over the preceding ten years averaged a negative 0.72.

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- 7. I know from my work at TRMC since 2007 that the dismal history of the District and its years of failure are deeply rooted in disharmony within the Tulare medical community. When the MSA was signed, I had personal knowledge of the fact that there was a powerful physician group which sought to control of the Hospital and its finances which, if achieved, would permit them to operate the Hospital as if it were an extension of their private practices. They were hamstrung by a Corporate Integrity Agreement with the Federal Office of Inspector General to correct and address inappropriate physician contracting practices. The Corporate Integrity Agreement limited the reach of those physicians within the Hospital. They were angered by the selection of HCCA as manager because of HCCA's focus on the larger interests of the Hospital rather than those physician's financial interests. After HCCA began managing the District, this group of physicians turned even more completely against HCCA after a government inspection which forced the then Board (which they saw as pro-HCCA) to disaffiliate with them. In response they supported the formation of the so-called Citizens for Hospital Accountability ("CHA") group. They then began a steady pattern of referring their patients to other hospitals and an attempt to oust HCCA. The District desperately needed financing to complete a scandalrocked tower then under construction and HCCA presented a bond offering for public vote to complete the tower and provide funding for the District. These physicians actively opposed Measure I as a means of denying the District of the much needed funding even though no other credible source of funding was available and not completing the tower would have meant the Hospital would be unable to meet the state's earthquake compliance requirements required for it to remain viable The measure failed and then these doctors backed their own CHA-selected Candidates for the Board. When these candidates were elected, they became the Board majority, which in turn has continued the attacks on HCCA and me.
- 8. The need for Measure I arose long prior to HCCA's arrival. In 1994, following the "Northridge Earthquake," Senate Bill 1953 mandated that California hospitals be rebuilt to meet more stringent seismic guidelines. The then new Board sought and obtained voter approval in 2005 for an \$85 million General Obligation bond offering to bring the existing uncompleted Hospital structure into compliance. The cost of the new tower at inception in 2007 was estimated

at \$120 million and the plan as described in the initial bond documents in 2007 called for a second bond offering at a later date to make up the difference. This Hospital project became a financial and legal disaster. The funds raised by the District from the sale of bonds much earlier were substantially exhausted by 2014 (over 90%); the Hospital tower was unoccupied and only two thirds complete and the Hospital project was mired in multiple lawsuits and unpaid claims with no prospects of funding its completion. Today, the Hospital remains out of compliance with Senate Bill 1953. In addition, as a result of the de facto boycott of the District by the ousted doctor group the volume of inpatients at the Hospital was materially reduced by nearly 40% of the prior volume and the volume of obstetrical deliveries was reduced by some two thirds. A true and correct copy of a chart prepared by HCCA from District records showing reduced patient volumes of the dissident physicians is attached hereto as **Ex. 3**.

- 9. Thus, before HCCA's arrival, the financial condition of the District was so bad for the fiscal years ending 2012 and 2013, that its outside independent auditors refused to issue a "clean opinion" and instead imposed a "going concern" condition to their audit report opinion. A true and correct copy of the foregoing Audit Report is attached hereto as **Ex. 4**. Such an opinion meant that the auditors had grave concern about their client's ability to avoid liquidation over the next 12 months.
- 10. When HCCA assumed its management role in 2014, the financial deterioration of the District left it with less than a month's cash for its operations. In addition, the District was operating under, and subject to, the five-year Corporate Integrity Agreement it had been required to enter into with the Federal Office of Inspector General to redress a history of its physician contracting practices.
- In 2013, the District solicited and received bids from diverse parties, including HCCA, to take over the management of all of the District's operations, including the Hospital. In December 2013, the Board unanimously selected HCCA from among the bidders, and entered into an interim agreement in January 2014, pending completion of the parties' negotiations of a long term MSA, which was finalized in May 2014. As stated above, both agreements were approved by a 5-0 vote of the Board. When HCCA was selected, the Board had been searching

for an affiliation partner for a year. The Board members expressed to me that they believed the District's long-term historical problems were due to poor governance and interference by the Board in operations.

- 12. One of the issues that HCCA was called upon to address as manager was the failure of the physician leadership of the District to comply with peer review, physician credentialing, and other requirements for federal funding. In January 2016, the Federal Centers for Medicare and Medicaid Services (CMS) performed a survey of the Hospital's performance in past years and found a history of gross negligence by the physician leadership at the Hospital and threatened to exclude the Hospital from federal funding. The Hospital receives approximately 80% of its funding from governmental sources, so such a step by CMS would have caused the immediate closure of the Hospital.
- imminent threat to the Hospital's ability to qualify for federal funding, the District Board disaffiliated itself from the then existing medical staff in 2016 and instead associated itself and the District with a new medical staff. After this successful restructuring and under the new leadership of the medical staff, all doctors who previously worked at the Hospital retained their clinical privileges. Of note, both CMS and the California Department of Public Health found that the District's plan of correction the disaffiliation with the prior medical staff and affiliation with the new medical staff –properly addressed and corrected the problem and the plan of correction was accepted in its entirety.
- 14. HCCA now employs for the District approximately 525 nurses, trained medical professionals and support staff. To date HCCA has given two across-the-board pay raises as well as dozens of additional individual pay increases. When HCCA arrived in 2014, pay had been frozen for years at the District.
- 15. In the fall of 2016, the Hospital, under HCCA management, received a quality award from the California Secretary of Health and Human Services for meeting or exceeding the healthy people 2020 goal for low-risk, first-birth Cesarean deliveries. A true and correct copy of this award is attached hereto as Ex. 5. Other recognitions include a 2016 CALNOC Performance

Excellence Award relating to the prevention of Hospital acquired infections – MRSA total facility, a true and correct copy of which is attached hereto as Ex. 6. In addition, the Hospital achieved a "Baby Friendly" status, a World Health Organization program that recognizes hospitals that offer an optimal level of care for infant feeding and mother-baby bonding.

dozen months of consecutive positive net margins as confirmed by annual audits. In the first six months HCCA was on board, the Hospital had a \$1.3 million net margin compared with \$4 million in losses in the six months prior to HCCA's arrival, and in the first full fiscal year under HCCA, the Hospital recognized a net margin exceeding \$7 million. Similarly, the first full fiscal year under HCCA saw a 10% operating margin. On October 26, 2016, I made a PowerPoint presentation to the Board summarizing the Hospital's tumultuous history prior to HCCA and its financial condition and success since HCCA was engaged under the MSA, a true and correct copy of which is attached as **Ex.** 7 hereto. The positive turnaround was recognized by bond rating services and reflected in their ratings. Fitch Ratings, a leading national credit rating firm, upgraded the District's revenue bond ratings, and updated its outlook for the District from "negative" to "positive" and stated in its August 28, 2014 ratings report:

SIGNS OF TURNAROUND: The Stable Outlook reflects the dramatic turnaround in operating and financial performance since Fitch's last review in February 2014....Fitch believes the positive trend over the last few months indicates performance improvement plans taking hold and signal recovery.

A true and correct copy of the August 28, 2014 Fitch Ratings Press Release is attached hereto as **Ex. 8**.

- 17. Fitch's positive outlook is continued in its report dated August 27, 2015. Fitch reported that the District's financial condition "reflects sustained evidence of operational and financial turnaround and stabilization." It also stated that "[u]nder HCCA's leadership, operating and financial performance improved dramatically over the last 18 months." A true and correct copy of the August 27, 2015 Fitch Ratings Press Release is attached hereto as Ex. 9.
- 18. On August 23, 2016, Fitch again reported positive results for the District and stated clearly its view of the reason for the success: "[The District] has sustained the trend of

strong operating performance since Fitch's last rating review in August 2015. Ongoing work by

the management team in place since January 2014 has brought a financial turnaround, and double

digit operating EBITDA margins are expected to continue." A true and correct copy of the

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August 23, 2016 Fitch Ratings Press Release is attached hereto as Ex. 10.

19. Similarly, on October 25, 2016, the national bond rating firm Moody's Investors

Service upgraded the District's outlook rating from negative to stable. Moody's emphasized the "improved operating performance beginning in fiscal 2014, driven by a new management team" –

namely, HCCA. Moody's explained in more detail, stating:

Beginning in fiscal 2014, a new management team affiliated with Healthcare Conglomerate Associates (HCCA) has generated significantly improved financial performance, growing revenues and reducing unnecessary costs. Operating revenues in fiscal 2015, for example, increased by close to 16.8%, resulting in a good 10.5% operating margin and marking the district's first positive operating margin since fiscal 2011. Previously, due largely to significant declines in patient volume and capital project costs, the district had three consecutive years of negative operating margins from fiscal 2012 through fiscal 2014.

A true and correct copy of Moody's October 25, 2016 Press Release is attached hereto as Ex. 11.

Moody's also opined that the positive outlook for the District would continue, due to HCCA's management:

The district's new financial management team [HCCA] has succeeded in reversing the district's past trend of weak operating performance, with the district's liquidity and operating margins demonstrating notable improvement. We believe that the current management team will remain in place over the intermediate term, maintaining a trend of stable financial operations.

Id.

20. Under HCCA's management, the Hospital has shown a profit and the District has enjoyed a far better than average net margin and financial stability it had not experienced in over a decade. In 2015 alone, the Hospital's financial returns were three times the national average for hospitals and were greater than at any time in the prior 12 years. The market value of the District increased by approximately \$32 million since HCCA became its manager, according to the 2016 fiscal year audit. A true and correct copy of Table 2, page 6, of the foregoing audit report is attached hereto as **Ex. 12**.

- 21. Kevin B. Northcraft, new Board Chair, argues in his declaration that since HCCA became manager, the District has suffered only disruption and turmoil. Declaration of Kevin Northcraft in Support of Motion for Authorization to Reject Executory Contract (Healthcare Conglomerate Associates, LLC), ¶¶ 6-7. As demonstrated by the foregoing financial summary, Mr. Northcraft's mere speculation without any foundation is simply wrong. Moreover, contrary to Mr. Northcraft's claim of disruption, in 2014, a year after HCCA came on board, two Board members that had supported the HCCA agreements ran for re-election unopposed.
- 22. The attack by the so-called CHA and its dissident physician sponsors was just the beginning of their attempt to harm the District, especially financially. This opposition group has mastered social media including its own website and Facebook, to attack its perceived enemies through falsehood, innuendo and name-calling. After the defeat of Measure I, CHA turned its focus to replacing three Board members with CHA's selected candidates, Kevin Northcraft, Michael Jamaica, and Senovia Gutierrez, who now control the Board.
- their deceptive smear campaign against HCCA and me. They have stated they want to "throw out the current HCCA contract based on [undefined] illegal overreach." *See* Visalia Times Delta, 6/30/2016, "What Measure I Supporters Need To Know," a true and correct copy which is attached hereto as **Ex. 13**. For example, on July 30, 2016, Mr. Northcraft and the CHA group are quoted as saying that if elected to the Board, they intend to "renegotiate or throw out the current HCCA contract" and to "do it 'the Tulare way'—not the Southern California divisive, secretive, and machine politics way." *Id*. The open threats by CHA, and the new Board members to "throw out" the HCCA contract and their continued disparagement of the Hospital, HCCA, and the MSA have poisoned the environment within which the Hospital must function to the detriment of the District and community. By way of illustration, calls have been made to the Office of the Congressman Nunes by someone impersonating my wife. Threatening calls also have been received at the Hospital making the false claim that "the Federal Attorney General is coming."
- 24. Instances of such deception and bad faith conduct include the following actions by current Board members and CHA. New Board Chair, Kevin Northcraft, has reposted and

published on social media a CHA post alleging that the MSA "brought our hospital to its current financial ruin, and thus, explains clearly how HCCA and Dr. Kumar are solely responsible for the substandard care offered at our hospital today...." A true and correct copy of the foregoing post is attached hereto as **Ex. 14**. During his election campaign, Northcraft made clear his desire to "amend or cancel," or in other words, "renegotiate or throw out the current HCCA contract." **Ex. 13**. He later did just that by turning a blind eye to much needed financing, as discussed below.

- 25. Northcraft posted on his Facebook page on July 28, 2017, "Dr. Benzeevi, how long did you have to study to bring a hospital to the brink of bankruptcy, fleece your employees and citizen's [sic] of the hospital district, and give such bad care you've frightened away most of the doctors in the area and an entire community...." A true and correct copy of the foregoing July 28, 2017 Facebook post is attached hereto as Ex. 15. The defamation extends to the reckless smear by Mr. Northcraft directed to existing counsel to HCCA. On or about September 11, 2017, he publicly and falsely stated: "I haven't received a phone call, text, email, in-person, anything from HCCA," "except their attorney, arguing that democracy doesn't exist for our district." Ex. 16. To my knowledge, no such statement was ever made by any counsel to HCCA.
- 26. When Mr. Northcraft and Mr. Jamaica were first elected to the Board, I insisted on a meeting with them to bring them up to date on all the current issues presently facing our hospital as well as hear from them suggestions for best strategies to enhance and improve our services to the community. A true and correct copy of the foregoing November 11, 2016 exchange is attached hereto as **Ex. 17**. Other than that meeting, none of the three new Board members have ever met with HCCA or even requested to do so.
- 27. New Board member Michael Jamaica has also stated his intention to have the MSA "amend[ed] or cancel[ed]." Ex. 18. New Board member Senovia Gutierrez has stated through social media that the District needs to "get rid of HCCA." A true and correct copy of Ms. Gutierrez's May 20, 2017 Facebook post is attached hereto as Ex. 19.
- 28. CHA has published several posts on Facebook, true and correct copies of which are attached as **Ex. 20**. They include the following:

• That the MSA "brought our hospital to its current financial ruin, and thus, explains clearly how HCCA and Dr. Kumar are solely responsible for the substandard care offered at our hospital today...." Actions of Citizens for Hospital Accountability Group.

- Accusing HCCA of about to "replicate shady tactics" falsely and allegedly
 engaged in elsewhere by Doctor Benzeevi's brother. This particular post included a not so subtle
 reference to my Jewish faith, including an appalling cartoon throwback to the Nazi era showing a
 grotesque male with distorted facial features surrounded by huge amounts of money while sitting
 on top of helpless others.
 - Calling HCCA's leadership "fraudulent."
 - Referring to a "loan[f]raud."
 - Referring to "Doctor Benzeevi's out-and-out lies."
 - Stating, "This theft and graft must come to an end."
- 29. Leading up to the bankruptcy filing, the District has attempted to financially harm HCCA in ways large and small. For example, the new Board has refused to accept a tender of defense (at carrier expense) of several lawsuits filed against the replaced board. There is no gain for the District in doing this; but the harm to HCCA is palpable. The Board's actions also harm the Hospital by diverting efforts to litigation instead of the protection of patients and employees.
- 30. The bad faith and defamatory conduct by the CHA and new District Board have taken their toll. Within a week after the District's bankruptcy filing on September 30, 2017, Fitch downgraded the Issuer Default Rating from CC to D as a direct consequence of the chapter 9 petition. Fitch also downgraded the rating on the District's existing revenue bonds from CC to C, stating default appears inevitable "absent timely third-party intervention to support operations and debt service payments." Similarly, Moody's Investors Service downgraded the rating for the District on October 5, 2017, and maintained a negative outlook, while noting the "nonexistent cash liquidity" and "dysfunctional board relations." A true and correct copy of the Fitch Press Release dated 10/6/2017 is attached hereto as **Ex. 21**. A true and correct copy of Moody's Report dated 10/5/2017 is attached hereto as **Ex. 22**.
 - 31. Even before the chapter 9 filing, in recent weeks, the history of favorable Fitch and

Moody ratings for the District has turned negative. On August 9, 2017, Fitch downgraded its rating on revenue bonds and the District's Issuer Default Rating from BB- to B. Fitch further downgraded its rating on September 6, 2017 from B to CC "indicating probable default risk." The Fitch report notes the "downgrade to 'CC' represent very high levels of credit risk, reflecting TRMC's continued delays in executing external liquidity agreements to bolster working capital and heightened political instability at the TRMC board level." Fitch maintained the Rating Watch Negative (RWN) based on its concern "over the breakdown of communication between the TRMC board and hospital management that places risk on hospital operations and execution of credit agreements." A true and correct copy of the August 9, 2017 Fitch Downgrade Report is attached hereto as Ex. 23. A true and correct copy of the September 6, 2017 Fitch Downgrade Report is attached hereto as Ex. 24.

- 32. Notwithstanding the chaos and tumult brought upon the District by its own new Board over the past year including its failure to honor its contractual obligations to pay for the running of the Hospital (including payments for money due to HCCA and to the Hospital employees), HCCA has advanced millions of dollars to fund District operations notwithstanding that funding Hospital operations is clearly the District's, and not HCCA's obligation under the MSA. HCCA was under no contractual obligation whatsoever to advance such funds and, in acknowledgment of its responsibilities to repay such advances, the District issued promissory notes in HCCA's favor. Millions of dollars remained outstanding and unpaid under such promissory notes. In addition, HCCA has not been paid its contractual management fee since August. Thus, the District remains in default under the terms of the MSA.
- 33. The following listing sets forth the dates of the Requests for Funds by HCCA to satisfy the District's obligations under the MSA, as well as the amounts requested pursuant to Section 3(b)(iii) of the MSA. When these requests were not honored as required by the MSA, the District issued promissory notes for funds advanced by HCCA for ongoing District operations. HCCA does not have an ulterior motive other than for HCCA and vendors to receive what they are owed and for the Hospital funding to remain uninterrupted.
 - On 12/21/2016, HCCA submitted a Request for Funds in the amount of

1	\$1,064,729.80.
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- On 12/28/2016, HCCA submitted a Request for Funds in the amount of \$179,355.34.
- On 12/29/2016, HCCA submitted a Request for Funds in the amount of \$27,502.46.
- On 12/30/2016, HCCA submitted a Request for Funds in the amount of \$900,000.00 and \$281,393.44.
- On 3/31/2017, HCCA submitted a Request for Funds in the amount of \$1,800,000.00.
- On 4/10/2017, HCCA submitted a Request for Funds in the amount of \$1,112,229.77.
- On 5/8/2017, HCCA submitted a Request for Funds in the amount of \$1,105,835.33.
- On 5/23/2017, HCCA submitted a Request for Funds in the amount of \$422,045.25.
- On 6/6/2017, HCCA submitted a Request for Funds in the amount of \$1,134,399.70.
- On 7/21/2017, HCCA submitted a Request for Funds in the amount of \$250.000.00.
- On 7/31/2017, HCCA submitted a Request for Funds in the amount of \$1,500,401.01.

For purposes of illustration, true and correct copies of the 12/21/2016 Request for Funds and corresponding Promissory Note are attached hereto as Ex. 25.

34. At the Board's September 27, 2017, open session meeting, I and HCCA Chief Operations Officer Alan Germany appeared and discussed in open session the dire cash flow issue facing the District. We distributed the financial statements ("Financials") for the fourth quarter of 2017. The balance sheet portion of the Financials showed \$2,088,851 of cash and \$29,236,839 of current liabilities as of end of the quarter, June 30, 2017. A true and correct copy

of the Fourth Quarter 2017 Financials is attached hereto as **Ex. 26**. The Financials were previously distributed at the meeting of the Board's Finance Committee on July 25, 2017. The balance sheet forwarded by HCCA to the Board in April 2017 for the quarter ending March 31, 2017, a true and correct copy of which is attached hereto as **Ex. 27**, showed cash of \$3,622,318, current liabilities of \$3,682,258 and accounts payable of \$15,957,708. The two financial statement packages described above also were contemporaneously posted on the HCCA website.

- 35. At its September 27 meeting, I told the Board that the District was out of cash at present, and that HCCA had identified lenders with an interest in providing cash infusions to the District to bridge the lack of liquidity crisis and enable the Hospital to remain operational. I also suggested that a special meeting be called immediately to discuss the potential funding sources and opportunities I had identified.
- 36. I followed up the following evening, September 28, 2014, by writing the Board requesting that, pursuant to sections 1.b. or 1.c of the District bylaws, the Board conduct a special or an emergency meeting on Sunday, October 1, or on Monday, October 2, at which time he would present the loan options to the Board. A true and correct copy of my September 28, 2014 letter to the Board is attached hereto as **Ex. 28**.
- 37. At 12:11 p.m. the next day, September 29, the Board's counsel, Tim Thompson, rejected my request for a special or emergency meeting. In addition to rejecting the request that HCCA be permitted to present the Board with loan options on October 1 or 2, the Thompson letter served notice on HCCA notice of a 6:30 p.m. emergency meeting later that day. It attached an agenda which included consideration of whether to declare a fiscal emergency and to authorize the filing of a chapter 9 petition. I could not attend due to observance of Yom Kippur.

 Mr. Germany could not attend on a few hours' notice because he was traveling. I later learned that the District had voted to file a chapter 9 bankruptcy.

DECLARATION OF YORAI (BENNY) BENZEEVI, M D 17-13797-9-B

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 17th day of October, 2017 in Los Angeles, California.

Yorai (Benny) Benzeevi, M.D.

EXHIBIT 2

l	3		
2	MARC A. LEVINSON, CSB NO. 57613 CYNTHIA J. LARSEN, CSB NO. 123994		
3	ORRICK, HERRINGTON & SUTCLIFFE 400 Capitol Mall, Suite 3000	LLP	
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5	Telephone: (916) 329-4910 Email: malevinson@orrick.com		
6	<u>clarsen@orrick.com</u>		
7 8	HAGOP T. BEDOYAN, CSB NO. 131285 LISA HOLDER, CSB NO. 217752	•	
9	Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball LLP		
10	5260 N. Palm Avenue, Suite 201 Fresno, California 93704		
11	Telephone: (559) 438-4374		
12	Facsimile: (559) 432-1847 E-mail: hbedoyan@kleinlaw.com		
13	<u>lholder@kleinlaw.com</u>		
14	Attorneys for Healthcare Conglomerate Assoc	iates, LLC	
15	UNITED STATES I	BANKRUPTCY COURT	
16	EASTERN DISTRICT OF CA	ALIFORNIA, FRESNO DIVISION	
17			
18	In re:	Case No.: 17-13797-9-B	
	TULARE LOCAL HEALTHCARE		
19	TULARE LOCAL HEALTHCARE DISTRICT dba TULARE REGIONAL	Chapter 9	
19 20		Chapter 9 DC No.: WW-1	
20 21	DISTRICT dba TULARE REGIONAL MEDICAL CENTER,	DC No.: WW-1 EXHIBITS 1-29 TO THE DECLARATION	
20 21 22	DISTRICT dba TULARE REGIONAL MEDICAL CENTER,	DC No.: WW-1	
20 21 22 23	DISTRICT dba TULARE REGIONAL MEDICAL CENTER,	DC No.: WW-1 EXHIBITS 1-29 TO THE DECLARATION OF YORAI (BENNY) BENZEEVI IN OPPOSITION TO DEBTOR'S MOTION TO REJECT EXECUTORY CONTRACT	
20 21 22 23 24	DISTRICT dba TULARE REGIONAL MEDICAL CENTER,	DC No.: WW-1 EXHIBITS 1-29 TO THE DECLARATION OF YORAI (BENNY) BENZEEVI IN OPPOSITION TO DEBTOR'S MOTION TO	
20 21 22 23 24 25	DISTRICT dba TULARE REGIONAL MEDICAL CENTER,	DC No.: WW-1 EXHIBITS 1-29 TO THE DECLARATION OF YORAI (BENNY) BENZEEVI IN OPPOSITION TO DEBTOR'S MOTION TO REJECT EXECUTORY CONTRACT (HEALTHCARE CONGLOMERATE ASSOCIATES, INC.) Date: October 19, 2017	
20 21 22 23 24 25 26	DISTRICT dba TULARE REGIONAL MEDICAL CENTER,	DC No.: WW-1 EXHIBITS 1-29 TO THE DECLARATION OF YORAI (BENNY) BENZEEVI IN OPPOSITION TO DEBTOR'S MOTION TO REJECT EXECUTORY CONTRACT (HEALTHCARE CONGLOMERATE ASSOCIATES, INC.)	
20 21 22 23 24 25	DISTRICT dba TULARE REGIONAL MEDICAL CENTER,	DC No.: WW-1 EXHIBITS 1-29 TO THE DECLARATION OF YORAI (BENNY) BENZEEVI IN OPPOSITION TO DEBTOR'S MOTION TO REJECT EXECUTORY CONTRACT (HEALTHCARE CONGLOMERATE ASSOCIATES, INC.) Date: October 19, 2017 Time: 2:00 p.m.	

Exhibit Page Number **Document** District Bylaws Management Services Agreement Chart Showing Reduced Patient Volumes of Dissident Physicians 2013 Audit Report 2016 California Secretary of Health and Human Services Award 2016 CLANOC Performance Excellence Award October 26, 2016 PowerPoint Presentation August 28, 2014 Fitch Ratings Press Release August 27, 2015 Fitch Ratings Press Release August 23, 2016 Fitch Ratings Press Release October 25, 2016 Moody's Press Release Table 2, Page 6, of 2016 Fiscal Year Audit Visalia Times Delta, 6/30/2016, "What Measure I Supporters Need To Know" July 30, 2017 Kevin Northcraft Facebook Post reposting Citizens for Hospital Accountability Post July 28, 2017 Kevin Northcraft Facebook Post

1 2	16	285	Our Valley Voice, 9/11/2017, "Tulare Hospital In Arrears, HCCA Claims Breach of Contract"
3	17 ·	294	November 11, 2016 Email Exchange Between HCCA and Kevin Northcraft
4 5	18	297	Visalia Times Delta, 10/22-23/2016, "Let's Take Back Our Public Hospital" Election Mailer
6 7	19	299	May 30, 2017 Senovia Gutierrez Facebook Post
8 9 10 11	20	302	February 25, 2017 Kevin Northcraft Facebook Post reposting Citizens for Hospital Accountability Post; March 23, 2017 Citizens for Hospital Accountability Facebook Post; May 20, 2017 Citizens for Hospital Accountability Facebook Post; June 20, 2017 Citizens for Hospital Accountability Post with comments; August 2, 2017 Citizens for Hospital Accountability Post
12 13	21	309	October 6, 2017 Fitch Ratings Press Release
14 15	22	318	October 5, 2017 Moody's Report
16	23	324	August 9, 2017 Fitch Downgrade Report
17 18	24	330	September 6, 2017 Fitch Downgrade Report
19	25	339	Exemplary Request for Funds and Promissory Notes from December 2016
2021	26	345	District Fourth Quarter 2017 Financials
22 23	27	350	Balance Sheet for Quarter Ending in March 31, 2017
24	28	355	Benny Benzeevi September 28, 2014 Letter to District Board
2526	29	362	Citizens for Hospital Accountability Facebook Comment regarding Recall of Dr. Kumar

EXHIBIT 1



869 N. Cherry St. - Tulare - CA - 93274 559.688.0821 - www.TulareRegional.org

TULARE LOCAL HEALTHCARE DISTRICT BYLAWS

Adopted: May 22, 2013

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ARTICLE I

NAME, AUTHORITY, PURPOSE AND LOCATION

Section 1. NAME

The name of this District is "Tulare Local Health Care District," and is doing business as "Tulare Regional Medical Center," referred to herein as the "District."

Section 2. AUTHORITY

a. The District is a local health care district organized
November 27, 1945, under the provisions of Division 23 of
the California Health and Safety Code, otherwise known and
referred to herein as "The Local Health Care District Law."

Under the terms of the Local Health Care District Law, as amended from time to time, the District has established and owns and operates Tulare Regional Medical Center (the "Hospital") and other facilities and services as set forth in Section 6 of this Article.

- b. These bylaws, and any amendments hereto, shall collectively be known as the "District Bylaws."
- c. In the event of any conflict between the District Bylaws and The Local Health Care District Law (California Health and Safety Code sections 32000 32492), the California Health and Safety Code shall prevail.

Section 3. MISSION, VISION & VALUES

a. Mission

To provide safe, efficient, technologically advanced healthcare with respect for the diversity of our region.

b. Visior

To be the leader and preferred healthcare organization in the region.

c. <u>Values</u>

Quality: To provide high-quality care, based on the best practices and in collaboration with Medical Staff that exceeds patient expectations.

Customer Service: To provide compassionate, courteous, respectful and dignified care, maintaining confidentiality and sensitivity to every individual.

Compliance/Ethics: To comply with regulatory requirements based on the highest ethical standards.

Finance/Efficiency: To conduct operations according to best practices in order to achieve financial goals.

People: To be the organization of choice for high-quality, culturally diverse employees and Medical Staff.

Growth: To expand access and availability of healthcare while growing services based on regional need.

Community: To partner with our communities to address local and regional healthcare needs and concerns.

Section 4. DESCRIPTION

The geographic area served by the District includes the City of Tulare, California, and the surrounding southwestern areas of Tulare County, including but not limited the communities of Angiola, Alpaugh, Earlimart, Pixley, Plainview, Tipton, Waukena, and Woodville.

Section 5. LOCATION

- a. The principal office for the transaction of business of the District is fixed and located at 869 Cherry Street, Tulare, California 93274 (the "Offices").
- b. Other offices and locations for the transaction of business of the District may be established by the Board of Directors within the boundaries of the District.

Section 6. COMPONENTS AND SERVICES

a. The District is a public agency. Facilities and services owned and operated by the District pursuant to the powers granted it under the Local Health Care District Law include, but are not limited to the following health care and non-health care components and services, which may be amended by the Board of Directors from time to time in the exercise of its discretionary authority.

- i. HEALTH CARE COMPONENTS AND SERVICES
 - a. Tulare Local Health Care District Hospital dba Tulare Regional Medical Center;
 - b. Tulare Home Care;
 - c. Mineral King Toxicology Laboratory;
 - d. Family X-Ray:
 - e. Evolutions Fitness & Wellness Center; and
 - f. Rural Health/FQHC Clinics.
- ii. NON-HEALTH CARE COMPONENTS AND SERVICES
 - a. Ownership of real property available for lease, rental or sale.

ARTICLE II

MEETINGS, ORDER OF BUSINESS

Section 1. MEETINGS

- a. The regular meetings of the Board of Directors of the District shall be held on the fourth Wednesday of each month, at such time as the Board of Directors may establish at the Offices, or such other location as the Board of Directors may from time to time establish.
- b. Special meetings of the Board of Directors of the District may be held in conformance with The Local Health Care District Law and the Ralph M. Brown Act. Special meetings may be called by three (3) members of the Board of Directors and notice of the holding of a special meeting shall be mailed, hand-delivered, electronically transmitted, or sent by facsimile or other generally acceptable means, to each member of the Board of Directors at least twenty-four (24) hours before the special meeting. Notice of each special meeting shall be posted at the designated area for posting Board of Director meeting agendas at least twenty-four (24) hours prior to the special meeting.

- c. Emergency meetings of the Board of Directors of the District may be held when prompt action is necessary due to actual or threatened disruption of public facilities in conformance with The Local Health Care District Law and the Ralph M. Brown Act. For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the Board of Directors: (i) work stoppage or other activity which severely impairs public health, safety or both; (ii) crippling disaster which severely impairs public health, safety, or both.
- d. All meeting sessions of the Board of Directors of the District, whether regular or special, shall be conducted in accordance with The Local Health Care District Law (Health and Safety Code sections 32000, et seq.) and the Ralph M. Brown Act, California Government Code Sections 54950, et seq. ("the Brown Act").
- e. The agenda for any regular meeting of the Board of Directors for the District shall be posted in a clearly visible and publicly accessible site for the District, including the District's website, no less than seventy-two (72) hours prior to the regular meeting. The agenda shall contain a description of each item to be transacted. Items not appearing on the agenda shall not be transacted, except in compliance with the applicable provision(s) of California Government Code Sections 54950, et seq.

Section 2. ORDER OF BUSINESS

- a. A majority of the members of the Board of Directors shall constitute a quorum for the transaction of business.
- b. The Secretary of the Board of Directors shall cause to be kept at the principal office of the Board of Directors a book of minutes of all meetings of the Board of Directors showing the time and place, whether regular, special or emergency, and, if special or emergency, how authorized, the notice given, a list of persons who were notified or were attempted to be notified, the name of the directors present, and a statement of the vote of the directors on all motions and resolutions.
- The Board of Directors shall act only by motion and/or resolution and all votes, motions and/or resolutions shall be entered upon the minutes.

d. Decisions of the Board of Directors of the District establishing general rules, requirements and/or procedures affecting the Board of Directors shall be by resolution. All other decisions of the Board of Directors, unless otherwise controlled by statute, shall be by motion, which shall become effective upon the affirmative vote by the majority of the directors present upon entry in the minutes, or as otherwise provided.

ARTICLE III

BOARD OF DIRECTORS

Section 1. DIRECTORS

- a. The District shall be governed by a Board of Directors (the "Board") consisting of five (5) elected or appointed persons who are registered voters residing in their specific electoral zone of the District, as identified and modified by resolution of the Board.
- b. As of the November 2012 election, each member of the Board of Directors shall be elected by the electors of each of the zones. No person shall be eligible to hold the office as a member of the Board of Directors unless he or she has been a full time resident of the zone from which he or she is elected for 30 days immediately preceding the date of the election.

Section 2. POWERS

- a. The Board of Directors shall have all of the powers given to it by The Local Health Care District Law.
- b. From time to time the Board of Directors may pass resolutions regarding specific policy issues, as well as pass resolutions which establish policy for the operation of the District and any of its facilities.
- c. The Board of Directors shall determine the policies and procedures and shall have control of and be responsible for the overall operations and affairs of the District and its facilities, according to the best interests of the communities served by the District.

- d. The Board of Directors shall have the power to review and approve capital expenditures for the benefit of the District or any facilities owned and/or operated by the District.
- e. The Board of Directors shall have the sole power to engage, employ, assign, supervise and discharge legal representation of the District, including the District's General Counsel. For the purpose of any such engagement, employment, assignment, supervision and discharge, the General Counsel shall be considered an "officer" of the District, reporting to and advising the Board of Directors.
- f. The Board of Directors shall have the power to direct the operations of the District to ensure compliance with all applicable health care laws within the State of California and the United States, including but not limited to statutes, regulations and rules applicable to health care districts and related entities.

Section 3. DUTIES

- a. Members of the Board shall govern the District in accordance with the best interests of the public health and make and enforce all rules, regulations, and bylaws necessary for the administration, government, protection and maintenance of the District, under their management, and property belonging thereto.
- b. Members of the Board shall perform the duties and responsibilities required by The Local Health Care District Law, other public agencies laws applicable to the District, and applicable state and federal laws and regulations.
- c. Members of the Board shall have the ultimate moral, legal, and regulatory responsibility for the quality of services provided by all individuals who perform their duties in the District's facilities.

Section 4. ELECTION AND VACANCIES

- The Board of Directors shall be elected as provided in The Local Health Care District Law.
- b. Members of the Board of Directors of the District shall serve a term of four (4) years.

- c. A vacancy in the office of the Board of Directors shall be filled by the remaining members of the Board of Directors by appointment, as provided in California Government Code section 1780. Additionally, any such vacancies shall be filled by election by the remaining members of the Board of Directors after a thirty (30) day public notice has been made and interested parties have been interviewed by the remaining members. Any person appointed to fill such vacancy shall hold office for the unexpired term or the next regular election in accordance with law.
- d. The election of the members of the Board of Directors of the District shall be held on the first Tuesday after the first Monday in November in each even-numbered year, at which time a successor shall be chosen to each Director whose term shall expire when the successor takes office pursuant to Section 10554 of the Elections Code (Health & Saf. Cod. § 32100.5). The election shall be consolidated with the Statewide General Election pursuant to California Election Code Section 10400, et seq. The elected members shall take office at noon on the first Friday in December following the general election. Prior to taking office, each elected member shall take the official oath. (California Elections Code §§ 10553 and 10554.)

Section 5. TERM; REMOVAL

- A member of the Board of Directors of the District may be removed only by recall vote, as set forth in California Elections Code Section 2700.
- b. Notwithstanding any other provision of law or of the District Bylaws, the term of any member of the Board of Directors may, at the discretion of the remaining members of the Board, be deemed expired if he or she is absent from three (3) consecutive meetings, or from three (3) of any five (5) consecutive meetings of the Board of Directors and the Board of Directors, by resolution, declares the term of that member expired and that a vacancy exists on the Board of Directors.

Section 6. COMPENSATION

a. Members of the Board shall serve without compensation, except:

 Each Director shall be allowed and paid actual and necessary traveling and incidental expenses incurred in the performance of official business of the District in accordance with policies and procedures as may be established by the Board.

ARTICLE IV

OFFICERS

Section 1. OFFICERS

The officers of the District shall be members of the Board of Directors and elected by the Board members. The officers of the District shall include a President, Vice-President, Secretary and Treasurer. The President, Vice-President, Secretary and Treasurer and such other officers as may be designated by the Board of Directors shall be elected by the Board of Directors at the first regular meeting following an even numbered election year, and as further described herein Article III. Sec. 4 of the Bylaws.

Each elected officer shall serve a term of two (2) years, or until their successor is elected. An officer may resign at any time or be removed by a majority vote of the Board of Directors of the District then in office at any regular or special meeting of the Board of Directors. Reasons for action of removal shall be given in writing to each Board member, no later than ten (10) days prior to any action being taken.

In the event of a resignation or removal of an officer, the Board of Directors shall elect a successor to serve for the balance of the removed officer's unexpired term.

Section 2. PRESIDENT

The Board of Directors of the District shall elect one of its members to act as President and, if at any time the President shall be unable to act, the Vice-President shall take the President's place and perform their duties. The duties and responsibilities of the President (or Acting Officer) are as provided:

 Shall preside over all meetings of the Board of Directors of the District.

- Shall, in conjunction with the District's CEO and the District's legal counsel, be responsible for the placement of all items on Board meeting agendas.
- Shall sign, as President, such contracts, conveyances and other instruments in writing as the Board of Directors shall authorize or direct the President to sign.
- d. Shall be responsible for coordination and liaison with District legal counsel, auditors and consultants.
- e. Designate members of the Board to undertake special responsibilities and to report to the Board on those activities.
- f. Appoint members of Standing and Ad Hoc committees.
- g. Represent the Board at official functions when necessary, serve as spokesperson for the Board regarding Board actions, and keep the Board informed of such occasions.
- h. Shall perform such other duties as pertain to the office, as prescribed by the Board of Directors.

Section 3. VICE PRESIDENT

In the absence or inability of the President to serve, the Vice-President shall perform the duties of the President, and shall perform other duties as pertain to the office as are prescribed by the Board.

Section 4. SECRETARY

- The Secretary shall act as Secretary of both the District and the Board of Directors.
- b. The Secretary shall be responsible for seeing that records of all actions, proceedings, and minutes of meetings of the Board of Directors are properly kept and maintained in the office of the Board of Directors.
- c. The Secretary shall be responsible for seeing that all ordinances and resolutions of the Board of Directors pertaining to policy and government of the District and its facilities are properly recorded and are maintained in the office of the Board of Directors.

- d. The Secretary shall serve, or cause to be served, all notices required either by law or the District Bylaws and, in the event of their absence, inability, refusal or neglect to do so, such notices shall be served by any person thereunto directed by the President or Board of Directors.
- e. The Secretary shall be responsible for seeing that the seal of the District is in safekeeping in the office of the Board of Directors and shall use it under the direction of the Board of Directors.
- f. The Secretary shall perform such other duties as pertain to the office and as are prescribed by the Board of Directors of the District.

Section 5. TREASURER

- a. The Treasurer shall have the responsibility for the safekeeping and dispersal of funds in the treasury of the District, in accordance with the provisions of The Local Health Care District Law and in accordance with such resolutions, procedures and directions as the Board of Directors may adopt.
- b. The Board of Directors may designate, by motion, resolution or by proper procedure, any other person or persons who shall have authority to sign checks drawn on the appropriate accounts of the District, and to execute in the name of the District all contracts and conveyances and other instruments in writing.
- c. The Treasurer shall perform such other duties as pertain to their office and as are prescribed by the Board of Directors.

ARTICLE V

COMMITTEES

Section 1. GENERAL PROVISIONS

a. Board members shall be appointed to committees of the Board by the President, subject to the approval of the Board, at the first regular meeting of the Board each calendar year.

- b. The President of the Board may appoint, with concurrence of the Board of Directors, any special committees needed to perform special tasks and functions for the District.
- c. Committees of the Board shall be Standing or Ad Hoc.
- d. All committees, whether Hospital committees or committees established by the Board, shall be advisory to the Board unless otherwise specified by the Board. The purpose and progress of committees shall be reviewed by the Board on an annual basis, at the December regular meeting of the Board.
- e. The President shall appoint no more than two (2) members of the Board of Directors to participate in any given committee. Appointed Board members shall be assisted by District staff and consultants of the District.
- f. Each committee shall report its activities to the Board of Directors on a periodic basis.

Section 2. STANDING COMMITTEES

- a. <u>Finance and Audit Committee</u>. This committee shall be responsible for performing the following functions:
 - To oversee the financial management and budget of the District, in consultation with an independent auditor selected by the Board.
 - ii. Review and recommend to the Board policies and procedures in the areas of finance, fiscal controls, investments and insurance programs.
 - iii. Recommend to the Board a change in auditors at least every five years, oversee the selection process and make a recommendation to the Board for selection of an appropriate auditor.
 - iv. Review the completed audit of the District's books and accounts when received and report the committee's recommendation concerning the audit to the Board.
 - v. The Finance Committee will review and forward to the full Board the following reports:

- a. Profit & Loss and Budget Report
- b. Semi-Annual Investment Report
- c. Annual Budget Report
- vi. Perform other duties as assigned by the Board.
- b. <u>Compliance Committee</u>. This committee shall be responsible for overseeing implementation, execution, and effectiveness of the compliance program in ensuring compliance with applicable statutes, regulations, and other Federal health care program requirements.

The compliance committee shall include two (2) Board members, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, general counsel, Compliance Officer, and other personnel from relevant functional departments as the committee deems necessary. The Compliance Officer shall have direct access to the Board of Directors, and all members of the Compliance committee; including being present during any meeting of the Board. The Compliance Officer shall make regular reports to the Board of Directors and other District management concerning Compliance program implementation and execution. Responsibilities:

- Development and distribution of written compliance policies and procedures, including standards of conduct:
- Development and implementation of regular, effective education and training programs for all affected employees in applicable District facilities and services;
- iii. Development of a system to receive allegations of improper/ illegal/ non-compliant activities, which system promotes open lines of communication, protects the anonymity of complainants and protects whistleblowers from retaliation;
- iv. Development of a system to respond to allegations of improper/ illegal/ non-compliant activities;
- v. Investigation and remediation of identified systemic problems and enforcement of appropriate disciplinary action against employees who have violated internal

- compliance policies, applicable statutes, regulations or Federal health care program requirements including policies addressing the non-employment or retention of sanctioned individuals; and
- vi. Development and implementation of auditing or other evaluation techniques to monitor compliance and assist in the reduction of identified problem areas.
- c. <u>Building/Planning/Facilities Committee</u>. This committee shall be responsible for the following:
 - i. Oversee the proper use of all District properties;
 - Oversee the compliance of all agreements related to District assets, including issues of fair market value to protect against gifts of public funds;
 - iii. Set lease/rental rates and ensure lessee/tenant compliance with lease/rental agreements;
 - Recommend to the Board any action the committee deems necessary or advisable to ensure protection of the District's interests under any lease/rental agreement;
 - v. Work with lessees/tenants to resolve issues;
 - vi. Work with District architect on master planning and construction project(s) to develop the entire District campus, including the District's east campus.

Section 3. AD HOC OR SPECIAL COMMITTEES

Ad Hoc or Special committees (such as legislative, community based planning, governance, strategic planning, Bond Oversight) may be established by the President with the approval of the Board of Directors for such special tasks as circumstances warrant. It shall be the duty of the President to appoint the chairperson and members of each Ad Hoc or Special committee. The Ad Hoc or Special committee shall limit its activities to the accomplishments of the task for which it is appointed and shall not have power to act, except as is specifically conferred by action of the Board. Upon completion of the task for which appointed, such Ad Hoc or Special committee shall stand discharged.

Section 4. HOSPITAL COMMITTEES

- a. Existing Hospital Committees. The President shall appoint no more than two (2) Board members to serve as Board liaisons on the following established and existing Hospital committees:

 Joint Conference Committee, Physician Recruitment
 Committee; and/or those Hospital committees which may be established from time to time.
- b. <u>Joint Conference Committee</u>. The President of the Board and a member of the Board appointed by President shall participate, along with the Chief Executive Officer, in the Joint Conference Committee, which is a committee of the Medical Staff of the District. This committee shall serve as a systematic mechanism for communication between members of the Board, the Administration, and members of the Medical Staff of the District. Specifically, issues which relate to utilization, credentialing, the Peer Review process, and quality of patient care shall be regularly addressed. These meetings shall be held on a routine basis, and at a minimum of twice a year. The proceedings and records of this committee are protected by Section 1157 of the Evidence Code.
- c. <u>Performance Improvement Committee</u>. This committee's primary purpose is to provide oversight of the District's performance improvement activities, and to establish a consistent, systematic approach to improving organization wide improvement. A summary of Performance Improvement activities is to be submitted to the Board on periodic basis, but not less than semi-annually.
- d. <u>Credentialing Committee</u>. This committee's primary purpose is for the Chair and the Vice Chair of the Board to work with the CEO and Chief of Medical Staff regarding the credentialing process of the District. In collaboration with the Medical Staff, the Credentialing Committee will submit recommendations made by Credentialing Committee to the Board for recommendation, approval and/or rejection of the credentialing of the Medical Staff.
- e. <u>Grievance Committee</u>. The Board of Directors delegates responsibility for the grievance process, as required by the Medicare Conditions of Participation, to the Hospital. A Grievance Committee shall be responsible for

developing/amending policies and procedures for the handling of patient grievances in accordance with legal requirements.

ARTICLE VI

CHIEF EXECUTIVE OFFICER

Section 1. GENERAL PROVISIONS

- a. The Board shall appoint and may enter into a contract of employment with a competent experienced Administrator who shall serve as the Chief Executive Officer (CEO) and manager of the District, as provided and in compliance with The Local Health Care Law and Ralph M. Brown Act.
- The Board shall be solely responsible for appointment or dismissal of CEO.
- c. The CEO shall have the ultimate operational authority and shall be responsible for the day-to-day administration and management of the District in all its services, activities and departments, and Medical Staff relations, subject only to such policies adopted and/or issued by the Board of Directors of the District.
- d. The CEO shall act as the "duly authorized representative" of the Board of Directors in all matters the Board has not otherwise formally designated to another.
- e. In the absence of the CEO, a Vice President designated by the CEO shall assume the responsibilities of this position. The Board Chair, in consultation with the Board, retains final authority to name the person to act during the long term absence or incapacity of the CEO.
- f. On a periodic basis, but at a minimum annually, the Board shall meet in Executive session to monitor the performance of the CEO. The conclusions and recommendations from this performance evaluation will be directly communicated to the CEO.

Section 2. AUTHORITIES AND DUTIES

The authorities and duties of the CEO, as required and as authorized by the Board shall be:

- (1) To prepare and submit to the Board of Directors for approval a plan or organization of the personnel and others concerned with the operation of District facilities, services, activities and departments, including but not limited to Tulare Regional Medical Center, and all of its related programs and services.
- (2) To prepare an annual budget of the expected receipts and expenditures.
- (3) To conserve physical and financial assets of the District.
- (4) To select, employ, assign, supervise, and discharge all employees.
- (5) Establish and maintain information and support systems.
- (6) To ensure physical properties are kept in good repair and operating condition.
- (7) To supervise all business affairs, financial transactions, collections of accounts, purchase and insurance of supplies, and to ensure all funds are collected and expended to the best possible advantage.
- (8) To submit to the Board of Directors a Capital Expenditure Report on a quarterly basis, as to how the capital expenditures in the previous quarter have been spent. A Capital Expenditures Budget is approved on an annual basis by the Board. The quarterly Capital Expenditure Reports are presented to inform the Board as to how the resources of the annual Capital Expenditure Budget are being managed.
- (9) To submit to the Board of Directors other expenditures exceeding the sum of Twenty Five Thousand Dollars (\$25,000.00).

- (10) To advise and cooperate with the Medical Staff of Tulare Regional Medical Center and to secure like cooperation directed toward and in the interest of rendering quality professional services to all patients.
- (11) To prepare and submit regularly to the Board of Directors periodic reports showing the professional services performed, the financial activities of the District and such other reports as may be required by the Board of Directors.
- (12) To attend meetings of the Board of Directors and its committees.
- (13) To perform any other duties assigned or delegated by the Board and/or necessary to serve the best interest of the District.
- (14) To serve as the liaison officer and channel of communications for all official communications between the Board of Directors or any of its committees and the Medical Staff.
- (15) To be responsible for, have control of, and authority for decisions concerning the operation of District facilities, services and divisions and their related personnel, including but not limited to Tulare Regional Medical Center and its affiliated programs and services.
- (16) To report to the Board at regular and special meetings all significant times of business of Tulare Regional Medical Center and make recommendations concerning the disposition thereof.
- (17) To ensure that the District complies with applicable laws, regulations and standards.
- (18) To promote awareness of the District, good will in the community, and philanthropic support.

ARTICLE VII

MEDICAL STAFF

Section 1. GENERAL PROVISIONS

- The Board of Directors shall appoint the Medical Staff a. composed of licensed physicians, dentists, podiatrists, allied health or clinical psychologists duly licensed by the State of California, as described in the Health and Safety Code of the State of California, sec. 32128. The Board of Directors. upon consideration of the recommendations of the Medical Staff coming from the Medical Executive Committee, through the Credentialing Committee, affirms or denies appointment and privileges to the Medical Staff of Tulare Regional Medical Center. The Board shall reappoint members to the Medical Staff every two (2) years, as set forth in the Medical Staff Bylaws. The Board requires that an organized Medical Staff is established within the District and that the Medical Staff submits their Bylaws, Rules and Regulations and any changes thereto, to the Board of Directors for approval.
- All applications for appointment to the Medical Staff shall be in writing, shall be addressed to and submitted to Administration, the Medical Staff and to the Board of Directors for final approval.
- c. In no case shall the Board take action on an application, refuse to renew an appointment, or cancel an appointment previously made without conference with the Medical Staff or its duly authorized representative. Final responsibility for appointment, modification, rejection or cancellation of any appointment shall rest with the Board of Directors. The standards for appointment and reappointment of the Medical Staff shall be as provided by the standards of the regulatory and accrediting agencies.
- d. The Medical Staff shall be self-governing with respect to the business of the Medical Staff, and as provided in Section 2282.5 of Business & Professions Code.
- e. The Medical Staff shall initiate, formulate, adopt and recommend to the Board of Directors, Medical Staff Policies and Procedures, Bylaws, Rules and Regulations, and amendments thereto which shall be effective when approved

by the Board of Directors. The Medical Staff shall exercise this responsibility and authority in good faith and in a reasonable, timely, and responsible manner, reflecting the interests of providing patient care in a manner consistent with the generally recognized level of quality and efficiency, and maintaining a harmony of purpose and effort with the Board of Directors. The Medical Staff and the Board of Directors shall maintain a collaborative relationship to ensure proper and timely adoption and/or amendment of Medical Staff Policies and Procedures, Bylaws, Rules and Regulations.

- f. The Board of Directors holds the Medical Staff accountable and responsible for the development, adoption, and annual review of its own Medical Staff Bylaws, Rules and Regulations that are consistent with the District's policies, applicable codes, and/or other regulatory requirements. Neither the Medical Staff nor the Board of Directors may make unilateral amendments to the Medical Staff Bylaws or the Medical Staff Rules and Regulations.
- g. The Medical Staff is responsible for establishing the mechanism for the selection of Medical Staff Officers, Medical Staff Department Chairpersons, and Medical Staff Committee Chairpersons, with the mechanism included in the Medical Staff Bylaws and Rules.
- h. The Medical Staff shall meet in accordance with the requirements of Accrediting Agencies as they deem necessary to review and analyze their clinical work within the District. The Medical Staff and Management are to review and revise all departmental policies and procedures as often as needed, and comply with any and all regulatory agency requirements.
- In the event of a discrepancy between Medical Staff Bylaws, Medical Staff Rules and/or the District's Bylaws, the District Bylaws shall, to the extent permitted by law, prevail.
- j. The District shall retain the ability to make effective business decisions that are necessary for the efficient and high quality operation of its facilities.
- k. The Board of Directors shall adopt Appointment and Corrective Action Procedures for the Medical Staff setting forth the procedures governing: (1) appointments and re-

- appointments to the Medical Staff; (2) delineation of clinical privileges; (3) assignments to staff categories; and (4) procedures relating to corrective actions involving applicants and medical staff appointees.
- I. The Board of Directors shall adopt a Fair Hearing Procedure for the Medical Staff setting forth: (1) the hearing rights which will be afforded to applicants and appointees to the Medical Staff in the event of a reduction, restriction, suspension, revocation, denial or failure to renew staff appointment or clinical privileges, or a recommendation for any of the foregoing; (2) the circumstances under which such hearing rights will be made available; (3) the manner in which such hearing will be conducted; and (4) the method of selecting members of the Hearing and Appellate Review Committees.
- m. The District CEO, as an Ex-Officio member of the Medical Executive Committee, shall have the right to attend all General, Executive and other committee meetings of the Medical Staff and shall be given notice of such meetings.
- n. Members of the Medical Staff are eligible to run in public election for membership on the Board of Directors in the same manner as any other member of the public.

Section 2. MEDICAL STAFF (ACTIVE, COURTESY, CONSULTING, & PROVISIONAL)

a. General qualifications and membership on the Medical Staff of the District shall be extended only to practitioners who are professionally competent and continuously meet the qualifications, standards, and requirements as set forth in the Medical Staff Bylaws and Rules. Medical Staff membership (except Honorary Medical Staff) shall be limited to practitioners who are currently licensed or qualified to practice medicine, dentistry, podiatry or oral surgery in California.

Section 3. TEMPORARY MEDICAL STAFF PRIVILEGES

Temporary privileges may be granted by the CEO (or designee), on the recommendation of the Chief of Staff or the chief of the appropriate service, or either's designee. All persons requesting or receiving temporary privileges shall be bound by the Medical Staff Bylaws and Rules, as well as the

Board of Directors Bylaws. Temporary privileges shall automatically terminate at the end of 120 consecutive days, but may be terminated earlier. A determination to grant temporary privileges shall not be binding or conclusive with respect to an applicant's pending request for appointment to the Medical Staff.

Section 4. HONORARY MEDICAL STAFF

Members of the Honorary Medical Staff shall be appointed by the Board of Directors from among former members of the Medical Staff who have retired from active practice, or other members of the medical profession who, in the opinion of the Board of Directors, are of such professional eminence as to merit this honor. Such members shall not vote on the business of the Medical Staff but may attend meetings, educational programs, and may be accorded the privileges of the floor.

Section 5. QUALITY OF CARE/PATIENT SAFETY AND PERFORMANCE IMPROVEMENT PROGRAM

- The Board of Directors shall assure that there is an efficient, effective, comprehensive and integrated solution focused Quality of Care/Patient Safety and Performance Improvement Program.
- b. The Board of Directors delegates the authority and responsibility for carrying out the Quality of Care/Patient Safety and Performance Improvement Program to the Active Medical Staff and CEO, who, in turn, shall demonstrate to the Board the effectiveness of such program for quality assurance. The Medical Staff Bylaws shall include a standing Performance Improvement Committee. Membership of the Performance Improvement Committee shall include an equal number of active Medical Staff and appropriate District staff.
- c. The Medical Staff and District staff will implement and report on the activities and mechanisms for monitoring and evaluating the quality of patient care, for identifying and resolving patient care problems, and for identifying opportunities to improve patient care within the District.
- d. The quality assurance mechanisms within any of the District's facilities shall provide for monitoring of patient care processes to assure that patients with the same health

conditions are receiving the same level of care within the District.

ARTICLE VIII

NONDISCRIMINATION POLICY

The District, including its members of the Board of Directors, officers, employees and agents, shall not engage in discrimination on the basis of actual or perceived age, ancestry, religious creed, race, color, national origin, sex, religion, physical or mental disability, medical condition, political beliefs, sexual orientation, and/or marital or family status.

ARTICLE IX

SEVERABILITY

If any article, subsection, paragraph, sentence, clause or phrase of the District Bylaws is for any reason held to be in conflict with the provisions of The Local Health Care District Law or any other law, statute, rule or regulation, such conflict shall not affect the validity of the remaining portion of the District Bylaws.

ARTICLE X

CONFLICTS OF INTEREST

Section 1. CONFLICTS OF INTEREST

Pursuant to Section 1090 of the Government Code, members of the Board and officers of the District shall not be financially interested in any contract made by them in their official capacity, or by the District or anybody or board of which they are members. Members of the Board or officers of the District shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

The Administration Policy Manual of Tulare Regional Medical Center and the Board of Directors Policy Manual has a written Conflict of Interest Policy which requires the completion and filing of a Conflict of Interest Statement disclosing financial interests that

may be materially affected by official actions and provides that designated staff members must disqualify themselves from acting in their official capacity when necessary in order to avoid a conflict of interest. The requirements of this policy are additional to the provisions of Government Code Section 87100 and other laws pertaining to conflict of interest; and nothing herein is intended to modify or abridge the provisions of the policies of Tulare Regional Medical Center which apply to:

- A. Members of the Board of Directors
- B. The executive staff of the District;
- C. All management personnel of any District Health care facility.

Each member of the Board of Directors and specified executives must file an annual Conflict of Interest Statement as required by California Code.

The Board shall assess the adequacy of its conflict-of-interest/confidentiality policies and procedures at least every three (3) years.

Section 2. PERMISSIBLE INTERESTS

The Board of Directors may approve a proposed transaction in which a member of the Board or officer of the District has only a remote interest, as defined by Government Code sections 1091 through 1091.5, or other interest allowed by law, upon the disclosure of such interest pursuant to the requirements of Government Code section 1091, the Local Health Care District Law, or other applicable laws.

Section 3. DUTY TO DISCLOSE

Members of the Board of Directors and officers of the District shall disclose any potential conflict to the Board of Directors prior to entering into any transaction entered by the District, and prior to participation in any related meetings, negotiations, discussions or other matters related to the transaction. Members of the Board of Directors and officers of the District shall abstain from participating in meetings, negotiations, discussions or other matters relating to a transaction in which the Board Member or officer of the District has a conflict of interest.

ARTICLE XI

INDEMNIFICATION

Section 1. ACTIONS OTHER THAN BY THE DISTRICT

The District shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the District) by reason of the fact that he or she is or was a director, officer, employee or agent of the Hospital District, or is or was serving at the request of the District as a director, officer, employee or agent of another corporation, partnership, join venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the District, and, with respect to any criminal action or proceeding. had no reasonable cause to believe his or her conduct was unlawful. The District shall indemnify any person, only as to that person's actions acting within the scope of his or her employment and/or authority as a director, officer or agent of the Hospital District. Willful acts outside the scope of any person's employment and/or authority of his/her position shall be investigated as to whether indemnification will be provided on a case by case basis. The termination of any action, suit or proceeding any judgment. order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Hospital District, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. Indemnification shall not be considered when any action, after a good faith investigation has transpired, has been deemed as unlawful.

Section 2. ACTION BY THE DISTRICT

The District shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the District to procure a judgment in its favor by reason of the fact that he or she is or was a director officer, employee or agent of the District, or is or was serving at the request of the District as a director, officer, employee

or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he acted within the scope of his authority and in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the District and except that no indemnification shall be made in respect of any claim issue or matter as to which such person shall have been adjudged to be liable to the District, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 3. AUTHORIZATION OF INDEMNIFICATION

Any indemnification under Sections (a) and (b) above shall be made by the District only as authorized in the specific case upon a determination that indemnification of the director, officer employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth therein. Such determination shall be made: (a) by the Board of Directors by a majority vote of a quorum consisting of members who were not parties to such action, suit or proceeding; or (b) if such quorum is not obtainable, or, even if obtainable a quorum of disinterested members so directs, by independent legal counsel in a written opinion; or (c) by the sole member.

ARTICLE XII

AMENDMENTS

Section 1. AMENDMENT BY MAJORITY

The District Bylaws may be amended by affirmative vote of majority of the total members of the Board of Directors at any Regular or Special meeting of the Board of Directors, provided a full statement of such proposed amendment shall have been sent to each member of the Board of Directors not less than seven (7) days prior to the meeting.

Section 2. ACTION TO AMEND

Affirmative action may be taken to amend the District Bylaws by unanimous vote of the entire membership of the Board of Directors at any Regular or Special meeting of the Board of Directors in which event the provision for seven (7) days notice shall not apply.

President, Board of Directors

Secretary, Board of Directors

Adopted by the Board of Directors on May 22, 2013

EXHIBIT 2

Management Services Agreement between

HealthCare Conglomerate Associates, LLC

and

Tulare Regional Medical Center

MAY 29, 2014

MANAGEMENT SERVICES AGREEMENT

RECITALS:

WHEREAS, the District owns and operates an acute care hospital at 869 North Cherry Street in Tulare, California (the "Hospital") together with the Clinics and Other Facilities;

WHEREAS, the parties have determined that Manager's provision of services in accordance with the terms of this Agreement will further the ability of the District (1) to provide for efficient delivery of health care services; (2) serve the best interests of the communities served by the District; and (3) enhance the ability of the parties to effectively and efficiently provide health care for the communities served by the District;

WHEREAS, the parties intend that this arrangement will allow them to achieve a number of mutually beneficial objectives, including the following: (1) further the development of a community-based integrated health care system; (2) enhance the quality of health care services available to residents of the communities served by the District; (3) respond to the health care needs and cost concerns of community residents by allowing evaluation of existing services and addition of new services, as deemed appropriate by Manager; (4) achieve efficiencies through coordination, consolidation, or reorganization, as appropriate, of certain identified health care services; and (5) improve the capacity of the parties and their affiliates to recruit and retain physicians necessary to serve the health care needs of the community, develop linkages with other providers and payers, and expand the geographical service area of the District;

WHEREAS, Manager has heretofore expended considerable effort and resources, including, but not limited to, financial resources and independent consultants, to review and analyze information regarding the Hospital provided by the District; and

WHEREAS, the District desires to engage Manager, and Manager desires to be engaged, to manage the operations of the District upon the terms set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual undertakings and representations herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to become legally bound, hereby agree as follows:

AGREEMENT

1. Definitions.

All capitalized terms not defined elsewhere in this Agreement shall have the following meanings, unless a different meaning clearly appears from the context:

(a) "Acquisition Proposal" shall have the meaning set forth in Section 9(b)(ii).

- (b) "Affiliate" means any other firm, partnership, association, corporation, joint venture or public body, directly or indirectly controlling or controlled by, or under direct or indirect common control with, the District or Manager. The term "control," when used with respect to a particular Person, means the possession, directly or indirectly, of the power to direct or cause the direction of management in the policies of such Person whether through the ownership of voting stock, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.
- (c) "Annual Budget" shall have the meaning set forth in Section 4(f)(i)."Bond Indenture" means that certain Indenture of Trust dated as of November 1, 2007 between the District and U.S. National Bank Association, as trustee.
 - (e) "Bonds" shall have the meaning set forth in Section 9(a)(i).
- (f) "Buildings" means those buildings and other structures in which the Operations, now or hereafter are conducted, together with such other buildings and structures now or hereafter owned, leased or otherwise operated by the District that Manager elects, in its sole and absolute discretion, to operate hereunder, by notice to the District from time to time.
 - (g) "Chief Executive Officer" shall have the meaning set forth in Section 4(a)(i)
 - (h) "CIA" shall have the meaning set forth in Section 5(a).
 - (i) "Claims" shall have the meaning set forth in Section 4(v)(x)(4).
- (j) "Clinics and Other Facilities" means those facilities and businesses identified on Exhibit A to this Agreement, together with such other facilities and clinics owned, leased or otherwise operated by the District that Manager elects, in its sole and absolute discretion, to manage hereunder, by notice to the District from time to time.
 - (k) "CMS" means the Centers for Medicare and Medicaid Services.
 - (I) "Collections" shall have the meaning set forth in Section 4(g)(i).
 - (m) "Compliance Plan" shall have the meaning set forth in Section 5(a).
 - (n) "Consultants" shall have the meaning set forth in Section 4(b)(xii).
 - (o) "Contract Document" shall have the meaning set forth in Section 4(v)(ii).
- (p) "Controlling Person" means any Person, who acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a Person submitting an Acquisition Proposal, including any shareholder owning, directly or indirectly, legally or beneficially, more than 5% of the equity of such Person submitting an Acquisition Proposal, a management company or similar service provider (together with a Person who is a Controlling Person of such management company or other business entity) and any other individual who, because of a relationship of any nature with the Person submitting an Acquisition Proposal or its owners, or managers, is in a position of actual control or authority with respect to the Person submitting an Acquisition Proposal, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the Person submitting an Acquisition Proposal.

- (q) "CP!" shall have the meaning set forth in Section 6(b)(i).
- (r) "CPI Increase" shall have the meaning set forth in Section 6(b)(ii)(1).
- (s) "Depository" shall have the meaning set forth in Section 4(g)(i).
- (t) "Depository Account" shall have the meaning set forth in Section 4(g)(i).
- (u) "District Default" shall have the meaning set forth in Section 10(a).
- (v) "Emergent Expenses" shall have the meaning set forth in Section 4(f)(ii).
- (w) "Employee Lease Payment" shall have the meaning set forth in Section 4(b)(viii).
- (x) "GAAP" means United States generally accepted accounting principles and practices as in effect from time-to-time as applied by Manager.
 - (y) "Governing Body" shall have the meaning set forth in Section 3(a).
- (z) "Governmental Authority" means any federal, State or local judicial, executive or legislative body or governmental municipality, department, commission board, agency or authority, including government contractors for federal health programs, and including without limitation, the State of California Health and Human Services Agency Office of Statewide Health Planning and Development.
- (aa) "Governmental Depository Account" means a Depository Account established for the sole purpose of receiving checks, wire transfers and other forms of electronic payments governed under the Social Security Act (42 U.S.C. §§ 1395 et seq.), including payments under Medicare, Medicaid and TRICARE/CHAMPUS, and payments administered or regulated by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services (collectively "Governmental Health Payers").
- (bb) "<u>HIPAA</u>" means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated pursuant thereto.
 - (cc) "Hospital" shall have the meaning set forth in the Recitals.
 - (dd) "Hospital Law" means California Health and Safety Code §32000 et seq.
 - (ee) "Ineligible Person" shall have the meaning set forth in Section 5(f).
 - (ff) "Interim Operating Agreement" shall have the meaning set forth in Section
 - (gg) "Jeopardy Event" shall have the meaning set forth in Section 10(d)(ii).
- (hh) "<u>Law</u>" means any constitutional provision, statute, ordinance, or other law, rule, regulation, interpretation, judgment, decree, or order of any Governmental Authority or any settlement agreement or compliance agreement with any Governmental Authority, including Hospital Law, as the foregoing may be revised, replaced or amended from time to time.

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9(a)(i).

- (ii) "Leased Employees" shall have the meaning set forth in Section 4(b)(ii).
- (jj) "Long Term Operating Agreement" shall have the meaning set forth in Section 9(a)(ii).
 - (kk) "Manager" has the meaning set forth in the Preamble.
 - (II) "Manager Default" shall have the meaning set forth in Section 10(c).
 - (mm) "Manager Parties" shall have the meaning set forth in Section 3(e)(i).
 - (nn) "Master Account" shall have the meaning set forth in Section 4(g)(iii).
 - (oo) "Medical Staff" shall have the meaning set forth in Section 3(e)(i).
- (pp) "Medical Staff Recommendations" shall have the meaning set forth in Section 3(e)(i).
- (qq) "Net Adjusted Management Fee" shall have the meaning set forth in Section 6(b)(ii)(2).
- (rr) "OIG" means the Office of Inspector General of the Department of Health and Human Services.
 - (ss) "Operating Contracts" shall have the meaning set forth in Section 4(n)(ii).
 - (tt) "Operating Period" shall have the meaning set forth in Section 2(a).
- (uu) "Operations" means the healthcare and other operations and programs which are conducted at the Hospital and the Clinics and Other Facilities, as the same may be modified by Manager from time to time during the Operating Period.
- (vv) "Person" means an association, a corporation, a limited liability company, an individual, a partnership (general or limited), a trust, a hospital district organized under the Hospital Law, or any other entity or organization, including a Governmental Authority.
 - (ww) "PHI" shall have the meaning set forth in Section 4(s)(iv).
 - (xx) "Pre-existing Claims" shall have the meaning set forth in Section 4(v)(x)(5).
 - (yy) "Project" shall have the meaning set forth in Section 4(v)(i).
 - (zz) "State" means the State of California.
 - (aaa) "Statement" shall have the meaning set forth in Section 4(b)(viii).
 - (bbb) "Suspended" shall have the meaning set forth in Section 9(b).
 - (ccc) "Termination Fee" shall have the meaning set forth in Section 10(b)(i).

2. Operating Period

- (a) <u>Initial Operating Period</u>. The initial term of this Agreement shall commence on the Effective Date and end on the date fifteen (15) years thereafter (as such initial term may be renewed pursuant to Section 2(b), the "Operating Period").
- (b) Extension of Operating Period. Upon completion of the initial Operating Period or of any subsequent renewal Operating Period, this Agreement shall automatically renew for an additional 10-year period unless either party shall send a written notice of intent not to renew the Agreement to the other party not less than twelve (12) months prior to the end of the initial Operating Period or then current renewal Operating Period, as applicable. Each renewal Operating Period shall be on the same terms and conditions set forth herein. Notwithstanding the foregoing, nothing herein is intended to permit the Operating Period to exceed such time period as is permissible under any tax-exempt bond financing requirements under applicable Law, with respect to bonds issued by the District on or prior to the date hereof, or hereafter issued with the concurrence of Manager. In the event the Operating Period exceeds any permissible time period, then the Operating Period shall be conformed to the maximum time period permitted under applicable Law.
- (c) Irrevocability of Agreement. The District acknowledges and agrees that Manager is entering into this Agreement in reliance on the long term nature of this Agreement, and further acknowledges that the rights, duties, powers and authority of each of the parties hereto, are intended to be non-terminable throughout the Operating Period, except in accordance with the express provisions of this Agreement. The District acknowledges that neither party will achieve the benefits intended to be achieved if the District has any continuing right or power to terminate this Agreement, or the relationship hereby created, except in accordance with the express provisions of this Agreement. Accordingly, the District, as a substantial inducement to Manager to enter into this Agreement and provide its proprietary systems and knowledge, hereby irrevocably waives and relinquishes any right, power or authority existing at law or in equity to terminate this Agreement, except in strict accordance with the express provisions of this Agreement. The parties further hereby acknowledge that any breach of this Section will cause irreparable and permanent damage to Manager, not compensable by money damages.

3. General Responsibilities of the Parties.

(a) Appointment. The District hereby engages and appoints Manager, and Manager hereby accepts such engagement, to exclusively provide day-to-day management services to and for the District with respect to the Hospital and the Clinics and Other Facilities. Anything herein to the contrary notwithstanding, Manager's authority hereunder shall be limited as described in Section 3(b), and Manager shall otherwise perform its services hereunder in accordance with Section 5. Manager's duties shall include but are not limited to financial and operating system management, preparation of proposed annual budgets, purchasing, contracting support and relationship management, expansion of the Hospital and the Clinics and Other Facilities or the services offered, preparation and implementation of staffing plans, recruitment of personnel, and supervision of the day-to-day operations of the Hospital and the Clinics and Other Facilities. Manager shall perform its services hereunder in accordance with the District Bylaws, the policies lawfully adopted by the Board of Directors of the District (the "Governing Body") and applicable Law. It is understood and agreed that to the extent that (i) Hospital Law is in conflict with any of the District's Bylaws, then Hospital Law shall control or (ii) the District's Bylaws or policies conflict with the terms hereof, the terms hereof shall control.

(b) General Control of the District.

- (i) Manager expressly acknowledges and agrees that the District exercises, and at all times during the Operating Period, shall exercise the ultimate control and direction of the Operations. Subject to the provisions of Section 3(a), Manager shall operate within the reasonable parameters, policies and procedures adopted by the Governing Body and communicated to Manager by the District, (and provided that such parameters, policies and procedures do not, in Manager's reasonable judgment, jeopardize the quality of patient care provided at the Hospital and the Clinics and Other Facilities, or require Manager or the District to engage in any illegal or unethical acts, or breach any express provision of this Agreement or any other agreement of the parties). Notwithstanding the ultimate control to be exercised by the Governing Body, Manager shall comply with its obligations under this Agreement, provided that the District shall not interfere with its ability to do so.
- (ii) Notwithstanding anything to the contrary herein, any change in the licensure type, payment model chosen by the Hospital, classification or operations of the Hospital other than as a Medicare participating acute care hospital that is paid through the Medicare Prospective Payment System (Social Security Act §1886(d)), shall be subject to the prior written approval of the Governing Body and Manager.
- (iii) The District shall timely furnish Manager with sufficient funds to timely pay the expenses relating to the Operations, including funding of both operating expenses and non-operating expenses. Subject to the more expedient funding requirements set forth in Section 4(b)(viii), if funds in the Master Account are insufficient, Manager shall notify the District of the need for funds by submitting Manager's fund request to the District and the District shall supply the requested funds within three (3) days of Manager's notice to the District of the need for same, provided that for unanticipated Emergent Expenses, Manager shall have the right to provide a shorter notice period. Manager shall not be obliged to fund the District expenses hereunder or provide funds to accommodate shortfalls in revenue, however, Manager may, in its sole and absolute discretion, advance funds as provided in Section 4(i)(i)(1). Manager shall not be in default hereunder if Manager's failure to comply with the terms of this Agreement is due to the lack of adequate funds provided by the District.
- (iv) The District shall assure that its funds are used to support the Hospital and the Clinics and Other Facilities and to provide charitable care therein and are not diverted to other uses.

(c) Cooperation and Responsiveness.

- (i) The District and its Governing Body shall fully and timely cooperate in good faith with Manager and shall be responsive and available to Manager during the Operating Period in order that Manager can carry out its duties and obligations hereunder.
- (ii) In any instance in which the District (or the Governing Body) has an obligation to provide input or decide an issue, or provide (or withhold) its approval or consent under the terms of this Agreement, the District (or the Governing Body) shall do so in accordance with the provisions of <u>Section 11(o)</u>. Unless a specific period of time is set forth herein for a particular act, a reasonable period of time for the District to provide input or decide an issue, or provide (or withhold) its approval or consent shall generally be within five (5) to seven (7) calendar days.

- (iii) In addition to its obligation to provide funds, the District will timely provide Manager with the necessary equipment, information and other resources to enable Manager to fully and timely perform its services hereunder.
- (iv) Manager shall provide up to five (5) hours of consultation to the District on a monthly basis regarding the Operations and the services provided hereunder. If requested to do so, Manager will provide additional consulting services for the District. Such services and the charge therefor will be determined by Manager and the cost thereof shall be billed to the District pursuant to Manager's then current terms and conditions, and the District shall pay such amount within thirty (30) days of invoicing.

(d) Relationship.

- (i) Except as specifically authorized hereunder, the District shall not interfere, directly or indirectly, with Manager's decisions or the daily Operations, and shall not interfere with Manager's ability to perform its obligations hereunder. The District representatives shall not access the Hospital and the Clinics and Other Facilities, except upon prior arrangement with Manager, except in the event of emergency. Except upon request of Manager, individual members of the District's Governing Body, shall not issue directions to Manager, except following and in accordance with the formal actions of the District's Governing Body. The District shall not access data systems utilized in connection with the Operations, unless specifically authorized by Manager in each instance.
- (ii) The District representatives' communications, formal and informal, regarding Manager and the Operations with Persons associated or affiliated with the Operations or Manager, shall be conducted exclusively with Persons designated by Manager's Chief Executive Officer.
- Neither the District nor its Governing Body shall (nor cause or encourage others to) disclose confidential or negative information regarding, or take any action or omit to take any action that is materially detrimental to the reputation of (anything which might tend to bring a party into public disrepute, hatred, contempt, scorn, scandal, or ridicule, or which might tend to reflect unfavorably on or otherwise degrade such party), Manager or any of the other Manager Parties, or make any statements, verbally, in writing or otherwise, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of Manager, or of the other Manager Parties, to anyone other than Manager's Chief Executive Officer. Notwithstanding the foregoing, negative information may be discussed within official the District Governing Body meetings and in connection with its internal operations, provided that if such information is used in a non-confidential forum, the District shall use reasonable efforts to verify the veracity and objectivity of such information prior to disclosing same in a non-confidential forum. However, nothing herein shall prevent the District or any member of its Governing Body from testifying truthfully in a legal proceeding or governmental administrative proceeding. the District acknowledges and agrees that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to, the news media, bondholders, industry analysts, competitors, strategic partners, vendors, employees (past and present), and clients.
- (iv) The parties acknowledge that: (1) this Section is a material provision of this Agreement; (2) any breach of this Section shall be a material breach of this Agreement, and (3) a breach of this Section would cause irreparable harm.

(e) <u>Medical and Professional Matters</u>.

All medical and professional matters relating to the care and treatment of patients requiring professional medical judgment shall remain the responsibility of the District medical director(s) and medical staff of the Hospital (the "Medical Staff"), provided, however, that Manager, in accordance with Cal. Admin.Code Regs., tit. 22, § 70701 and § 70703(b) and 42 C.F.R. § 482.12(a) and § 482.22, shall be obliged to (i) recommend written bylaws for adoption by the District in accordance with legal requirements and the District's community responsibility regarding the appointment and reappointment of members of the Medical Staff, which bylaws may or may not be consistent with the current bylaws in order to provide the most efficient, highest quality care practicable given the Hospital's size, location and resources, and (ii) provide recommendations to the District regarding Governing Body approval of Medical Staff by-laws (collectively "Medical Staff Recommendations"). It being the goal of the parties to establish and implement a medical staff development plan (the "Medical Staff Development Plan") that will lead to the establishment of a medical staff which is configured to (a) provide high quality care through a patient centered approach (b) be accountable for the care delivered and the efficiency of that care. The Medical Staff Development Plan shall be consistent with the provisions of 42 C.F.R. pt. 425, without regard to whether the District is a recognized accountable care organization. The parties recognize that changes established pursuant to the Medical Staff Development Plan implementation may result in a smaller more accountable Medical Staff being The District shall be deemed to have accepted Manager's Medical Staff Recommendations unless the District's Governing Body (i) within thirty (30) days of written notice of such Medical Staff Recommendation with good cause (which shall be specifically set forth in writing) specifically votes to disapprove the Medical Staff Recommendation and (ii) such vote is by a 4/5ths majority vote of the Governing Body, after Manager has been provided a reasonable opportunity to explain and/or justify the Medical Staff Recommendation before the members of the Governing Body. The Medical Staff shall be organized and shall function in compliance with applicable Law and other licensure, certification, and accreditation standards as they may be amended from time-to-time. Subject to the foregoing, final decision-making authority relating to all matters of medical, professional, and ethical affairs, are and shall be the exclusive responsibility of the District. Manager and its Affillates, and their respective officers, directors, managers, members, employees, agents, contractors and representatives (collectively, "Manager Parties") expressly do not, by this Agreement, undertake to perform or provide any physician or medical services to patients. Except as provided with respect to Medical Staff Recommendations, all matters requiring or involving physician professional medical judgments or medical issues shall remain the responsibility of the District and its Medical Staff. Manager and Manager Parties shall not be responsible in any manner for the acts, omissions or conduct of any member of the Medical Staff, or other credentialed health care providers or practitioners. Neither Manager nor Manager Parties shall be liable to any patient or other Person for damages arising out of or resulting from any medical treatment, or act or omission by, or dishonesty or misconduct of, any servant or employee of the Hospital and the Clinics and Other Facilities, any physician or other credentialed health care provider providing physician or medical services at the Hospital or the Clinics and Other Facilities, or any agent of the Hospital and the Clinics and Other Facilities (other than for the direct acts of agents of Manager and Manager Parties, which shall not include any physicians, health care professionals or the District employees). However, Manager and Medical Staff shall consult with each other regarding such matters where consultation is feasible and in the best interest of the patients of the District.

(ii) Subject to <u>Subsection 3(e)(i)</u>, Manager shall provide such oversight and support as Manager, in its sole and absolute discretion, deems appropriate for the Medical

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Staff's administrative affairs, including monitoring the performance of professional services by the Medical Staff and other licensed personnel.

- (iii) Subject to the Medical Staff Recommendations, the District retains control and authority over all appointments to the District's Medical Staff, the granting of clinical privileges at the District to the extent required by applicable Law and applicable accreditation standards, and any actions taken with respect to Medical Staff members, including appeals of actions. Actions taken by the District pursuant to this Subsection shall be consistent with the Medical Staff Development Plan. Notwithstanding the foregoing, the Chief Executive Officer or his or her designee may grant an individual temporary clinical privileges for a period not to exceed the greater of (i) one hundred twenty (120) days or (ii) such period as is allowed under applicable Law, all in accordance with accreditation agency requirements and the District's Bylaws.
- Standards of Performance. The District acknowledges that while Manager shall expend its commercially reasonable efforts in performing its obligations under this Agreement, Manager does not guarantee any particular results, notwithstanding projections which may be made by Manager. Manager's projections and forward looking statements are based on estimates and expectations, and reasonably available competitive, financial, economic and other data, and as a result are inherently uncertain. Actual results could differ materially from those anticipated as a result of a variety of factors. Manager shall use its commercially reasonable judgment in providing the services required under this Agreement. The parties acknowledge that implementation of the District's charitable care purposes may not permit the maximization of the District's profits. Manager shall, for and on behalf of the District, use commercially reasonable efforts to make recommendations and take actions required hereunder to assist the District to comply in all material respects with any material Law respecting the Hospital and the Clinics and Other Facilities. The District covenants that it will, in good faith, consider all of Manager's recommendations regarding the Operations, and will support and implement, through policies and/or other appropriate actions of the Governing Body, the recommendations it deems reasonably appropriate. The District is a California Health Care District organized and operating under the Hospital Law with, inter alia, a charitable mission, and it has under the Hospital Law certain responsibilities and obligations, including, but not limited to, obligations to provide charity care and indigent care. At all times, Manager, in managing the District, shall follow the charity and indigent care policies and obligations of the District (provided that the Hospital and the Clinics and Other Facilities' financial obligations in that regard shall not be materially changed unless such change is required by applicable Law) and shall assist the District in meeting all of the District's required obligations under Hospital Law, the District will promptly notify Manager of any changes to any policy, procedure, or the District Bylaw which may impact Manager's rights or obligations under this Agreement, including but not limited to, those affecting the Hospital and the Clinics and Other Facilities' charity care obligations.

4. Duties of Manager.

(a) Hospital Chief Executive Officer.

(i) Manager shall provide a Chief Executive Officer ("Chief Executive Officer") to provide the routine, day-to-day administrative and management services for the Hospital and the Clinics and Other Facilities, as set forth herein. Such Chief Executive Officer shall carry out the usual and customary duties of such positions within the health care industry. The Chief Executive Officer shall be an employee of Manager, as provided in Section 4(b). Notwithstanding anything to the contrary in this Agreement, the Chief Executive Officer's authority shall be at least as extensive as the authority the District delegated to the District's former chief

executive officer (as of the end of 2013), together with such additional authority as is provided in the District's Bylaws. However, it is specifically agreed that the restriction on the authority of the Chief Executive Officer set forth in Section 2(g) of the District's Bylaws (regarding submittal of certain expenditures over \$100,000 to the Governing Body) shall not be a limitation on the authority of the Chief Executive Officer. Any duties and/or responsibilities beyond the foregoing will be discussed and agreed upon by Manager and the Governing Body and will be provided by Manager pursuant to the terms of a separate written agreement in exchange for fair market value compensation, and in compliance with applicable Law.

(ii) The Chief Executive Officer shall: (i) serve as the District's authorized representative to the public, as well as to Governmental Authorities or voluntary organizations; (ii) report regularly to the Governing Body on the performance of the Hospital; (iii) assist the District with the development of strategies and action plans enabling the District to respond to the health care needs of individuals residing in communities served by the District; and (iv) direct the District in expanding its community relations program.

(b) Personnel.

- (i) As soon as reasonably practicable, as determined by Manager, following the Effective Date, Manager shall be and become the exclusive employer / contractor of the personnel of the Hospital and the Clinics and Other Facilities required for the day-to-day Operations, except for those employees who must be employed by the District in order to comply with applicable Law (e.g., 42 C.F.R. § 482.28). Manager shall provide advance notice to the District of the date or dates upon which Manager shall elect to become the employer of the personnel of the Hospital and the Clinics and Other Facilities, as provided herein. Such employee transition may be made in one or more stages, as determined by Manager.
- (ii) Upon Manager's becoming the employer of the employees associated with the Hospital and the Clinics and other Facilities, Manager shall lease the employees associated with the Hospital and the Clinics and Other Facilities (the "Leased Employees") to the District during the Operating Period, on the terms set forth in this Section 4. Prior to Manager's becoming the employer of such employees the District shall be the employer of the employees and shall be responsible for paying such employees in accordance with its regular payroll practices.
- (iii) The Leased Employees shall be employees of Manager for purposes of Manager's benefit programs or plans now existing or hereafter created, including compensation and payment and withholding of federal, state and local income, social security, unemployment, Medicare, other payroll and employment taxes, Section 125 plans, Section 403(b) annuities, workers' compensation and health insurance. Manager is solely responsible for the administration of employee benefits, benefit plans and programs for the Leased Employees. All expenses and charges incurred in connection with the Leased Employees shall be reimbursed to Manager by the District.
- (iv) Manager pays compensation to its employees for certain holidays and vacations. Any paid holidays and vacation occurring during the Operating Period hereof shall be billed to the District at the same rates as if the employee was working.
- (v) Manager reserves the right of direction and control over the Leased Employees, including a right to terminate Manager's employment relationship with a Leased Employee in Manager's sole and absolute discretion. Manager shall recruit, employ, train,

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promote, direct and terminate the employment of Leased Employees, as needed for the Operations, and shall provide oversight and consultation regarding performance standards, personnel policies, and employee benefits.

- (vi) Manager shall be responsible for the development and implementation of policies and practices, in conformity with the terms of this Agreement, relating to personnel management services only including without limitation, enrolling, recruiting, interviewing, selecting, training, evaluating, replacing, supervising, disciplining, reassigning and terminating Leased Employees.
- (vii) While performing services for the District, the Leased Employees will be subject to all work rules and performance standards applicable to Manager's employees and contractors, including disciplinary standards.
- Manager shall have the right to draw from the Master Account, or if such amount is not sufficient, the District shall pay to Manager the estimated amount of the Employee Lease Payment for each payroll cycle payment date within two (2) days of a request from Manager for such funds. Within ten (10) days after the close of each month. Manager shall deliver to the District a statement of the actual Employee Lease Payment(s) for the prior month (the "Statement"). At the District's written request, Manager shall provide the District reasonable supporting detail underlying the calculations of the Employee Lease Payment(s). If the Statement discloses that actual Employee Lease Payments were less than the estimated Employee Lease Payments for the applicable prior month, then Manager shall refund the excess to the District or redeposit such amount in the Master Account, as Manager shall determine appropriate. If the Statement discloses that actual Employee Lease Payments were more than the estimated Employee Lease Payments for the applicable prior month, then Manager shall be paid the shortfall by the District within one (1) business day or shall withdraw such amount from the Master Account, as Manager shall determine appropriate. If the District fails to timely advance funds for the Employee Lease Payment, Manager shall have the right, in its sole and absolute discretion, but not the obligation, to advance such funds, as provided in Section 4(j)(i)(1).
- (ix) The payment for the applicable period, with respect to each Leased Employee (the "Employee Lease Payment"), shall be an amount equal to 130% of the compensation (including, without limitation, wages, salary, compensation, employee benefits, insurance, workers' compensation coverage, unemployment compensation coverage, taxes, withholdings, contributions, commissions, bonuses and travel and business expenses), retirement, workers' compensation premiums and benefit amounts payable with respect to a Leased Employee, and taxes thereon.
- (x) Manager shall confer with the District in determining the general range of the number and qualifications of employees required for the efficient and effective operation of Hospital and the Clinics and Other Facilities and in establishing and revising in-service training programs, and job descriptions, all in order to accomplish the goals and objectives of Hospital and the Clinics and Other Facilities. However, Manager shall have the ultimate authority to hire, fire and set the terms of employment for all such employees. To discourage nepotism and conflicts of interest, the District and its representatives agree that they shall not request or require that Manager: (i) hire or fire any specific employee or amend the terms of any specific employee's employment, (ii) dictate the specific number of employees in a category of employment or (iii) select, reject or promote a Leased Employee or contractor (or its' personnel) based on the individual's political affiliation or beliefs or as a reward for political services or as a form of political

patronage, directly or indirectly. Likewise, the District shall not refer potential employees or contractors to Manager for hiring or engagement.

- (xi) During the Operating Period and for a period of two (2) years thereafter, the District and its Affiliates shall not, directly or indirectly, solicit for employment any Leased Employee.
- (xii) Manager may hire or retain any consultants, accountants, attorneys or other professional personnel (collectively, "Consultants") which Manager, in its sole and absolute discretion, determines is necessary or appropriate to assist Manager in carrying out its duties and responsibilities under this Agreement. The expense of any Consultants so retained shall be an expense of the District, but Manager shall not retain any such Consultants without the approval of the Governing Body, if the cost of such services shall exceed \$100,000 in any calendar year for such services, unless otherwise set forth in the approved Annual Budget.
- (xiii) Manager, during the transition of Leased Employees from the District hereunder, shall not implement any employee layoffs that could implicate the Worker Adjustment and Retraining Notification Act of 1988, as amended, 29 U.S.C. §§ 2101, et seg., and any similar state and local applicable Law, without providing any required notices. Notwithstanding anything in this Agreement to the contrary, Manager is not obligated to hire any specific District employee but may interview any or all such District employees. Manager may, but shall not be obligated to, make offers of employment to such employees of the District as are identified by Manager in its discretion. It is understood and agreed that (A) Manager's extension of offers of employment shall not constitute any commitment, contract or understanding (expressed or implied) of any obligation on the part of Manager to an employment relationship of any fixed term or duration or upon any terms or conditions other than those that Manager may establish pursuant to individual offers of employment, and (B) employment offered by Manager is "at will" and may be terminated by Manager or by an employee at any time for any reason (subject to any written commitments to the contrary made by Manager or an employee). Nothing in this Agreement shall be deemed to prevent or restrict in any way the right of Manager to terminate, reassign, promote or demote any of the Leased Employees or to change adversely or favorably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.
- (c) <u>Patient Safety Quality and Performance Measurement</u>. Manager shall assist in the implementation of the Hospital and the Clinics and Other Facilities' patient safety, quality, and performance measurement program. Manager shall provide oversight and facilitate the Hospital and the Clinics and Other Facilities' patient safety, quality, regulatory readiness, infection control/prevention, and service excellence performance metrics. Manager activities shall include:
- (i) Coordination, data collection/analysis and recommendation/facilitation of evidence-based practices to address the following:
- (1) Clinical program measures, hospital-acquired conditions, and other priority patient populations;
- (2) Patient and staff safety, including the reduction of preventable adverse events;
- (3) Infection control and prevention services to include electronic surveillance, tracking and transmission of required data;

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- (4) Regulatory and accreditation readiness and compliance tracking;
 - (5) Evidence-based policy and procedure development; and
 - (6) Patient satisfaction and loyalty.
- (ii) Manager will also recommend strategies to enhance the Hospital's patient safety and quality department infrastructures, assist the Hospital and the Clinics and Other Facilities in implementation of evidence-based order sets, and disseminate best practices. The District shall be responsible for all expenses associated with surveys, licensure, permits, and accreditation
- (iii) Manager shall use reasonable efforts, on a consultative basis, to guide or direct the District in maximizing its total performance score under the Federal government's value-based purchasing programs, including but not limited to the clinical process of core measures, the patient experience of care dimensions; and in connection with the Consumer Assessment of Health Care Providers and Systems surveys.
- (d) <u>Standard Forms.</u> Manager shall recommend standard formats for all charts, invoices, and other forms used in the Operations. Manager shall make reasonable efforts to ensure that such standard forms remain current as to applicable Law, as well as industry standards.
- (e) <u>Revenue Cycle Management</u>. Manager shall provide advice, direction, and reasonable assistance to the District and assist it in overseeing its revenue cycle management for the Hospital and the Clinics and Other Facilities. Services provided by Manager include making recommendations regarding Hospital and the Clinics and Other Facilities':
 - (i) Charge master or similar schedule of charges;
 - (ii) Adjustment coding;
 - (iii) Patient / client billing and collections; and
 - (iv) Coding and billing compliance audits.

All direct, out-of-pocket fees, expenses and charges incurred in connection with actual revenue cycle management shall be the District expenses.

(f) Annual Budget.

(i) Manager shall be responsible for preparation, presentation, monitoring, and reporting of the annual operating and capital budgets (collectively, the "Annual Budget"). Each proposed Annual Budget shall set forth an estimate of operating revenues and expenses (including capital expenses) for the next fiscal year, together with an explanation of anticipated changes in utilization, charges to patients and clients, payroll rates and positions, nonwage cost increases, and all other factors differing significantly from the then-current year. Manager shall be responsible for the oversight and review of the Annual Budgets, with final recommendations presented to the Governing Body for approval. Each Annual Budget will be created and implemented to coincide with the District's fiscal year, which is July 1st through June

30th of the following year. Once approved, Manager shall thereafter establish a plan necessary to implement such Annual Budget.

(ii) Subject to the limitations set forth in Section 3(f), Manager shall take commercially reasonable efforts to oversee the management of the Hospital and the Clinics and Other Facilities so that the actual revenues, costs, and expenses of the operation and maintenance of the Hospital and the Clinics and Other Facilities shall be consistent with the approved Annual Budget. Inclusion of any item within the Annual Budget shall constitute all necessary approval of the Governing Body for Manager to take such act to effectuate the budgeted item. Notwithstanding anything to the contrary herein, Manager shall have the right, in its sole and absolute discretion, to make any expenditures necessary on an emergent basis to avoid or mitigate damage to the Hospital and the Clinics and Other Facilities, obtain equipment repairs or to avoid or mitigate injury or potential injury to Persons or property or that are necessary on an emergent basis to comply with any Law or to cure or prevent any violation of any Law, whether or not provided for or within the amounts provided for in the approved Annual Budget for the applicable year (collectively, the "Emergent Expenses"). Manager shall use its reasonable efforts to give the District advance notice of any such Emergent Expenses, and in any event, shall give notice as soon as reasonably practicable after such expenditures, but in no event later than fifteen (15) days.

(g) Bank Accounts.

- (i) The District shall maintain the Gross Revenue Fund (as defined in the Section 5.01 of the Bond Indenture) bank accounts (the "Depository Accounts") at one or more financial institutions (the "Depository") pursuant to the requirements of the Bonds. The District shall cause all amounts received by or on behalf of the District in connection with the operation, maintenance, or ownership of the Hospital and the Clinics and Other Facilities (the "Collections") to be deposited in the Depository Accounts, including a Governmental Depository Account. Amounts received from Governmental Health Payers shall, unless otherwise required by the Bonds, be deposited into a separate Governmental Depository Account. Funds in the Governmental Depository Account shall be transferred, on a daily basis to a Depository Account (other than the Governmental Depository Account), in a manner consistent with the Bond Indenture. In the event that payments on the Bonds are delinquent or the Bonds are in default, or the Bond trustee shall have otherwise taken control of the Depository Accounts or amounts to be deposited therein, the District shall use its best efforts to cause the trustee to disburse amounts in the Gross Revenue Fund for the payment of current or past due expenses of the District and hereby authorizes Manager to make such requests directly to the Bond trustee on behalf of the District.
- (1) Except to the extent inconsistent with the Bond Indenture, the District shall enter into an agreement with each Depository to cause the Depository to receive such payments and deposit them into Governmental Depository Account in the name of the District, and sweep the proceeds of such account on a daily basis, into the Depository or Master Account as designated by Manager, in conformity with the terms of the Bond Indenture.
- (2) The foregoing instructions of the District with respect to the Government Depository Account shall be revocable, at the sole instruction of the District, to the extent required by applicable Law; provided, however, that if the District revokes such instructions, it shall be in material default of this Agreement and Manager shall, in addition to all other rights hereunder, be entitled to seek an order or judgment from a court of proper jurisdiction for specific performance to sweep the Governmental Depository Account pursuant to this Agreement.

- (ii) Manager, acting in the District's name and as agent of the District, as provided in <u>Section 4(h)</u> shall make or direct to be made timely deposits, in the Depository Accounts or the Master Account, as hereafter defined, of all Collections which Manager receives, subject to the Bond Indenture requirements.
- (iii) The District shall provide disposition instructions to the Depository to transfer, at the end of each business day during the Operating Period, subject to the terms of the Bond Indenture, all amounts in the Depository Account (other than amounts required for payment of the Bonds) into a bank account controlled by Manager (the "Master Account"). Except for the transfers to the Master Account and Bond payments, the District shall not remove, disburse, transfer, use, pledge, hypothecate, grant a lien on or security interest in, or otherwise encumber any funds in the Depository Accounts or Master Account.
- (iv) The District shall execute such documents as any Depository or Manager may reasonably require, including without limitation, a limited power of attorney, to permit the Depository to receive the Collections, endorse any checks, drafts, notes, money orders, cash, insurance payments, and other instruments relating to such Collections, deposit the Collections into the Depository Account, and to transfer the Collections (less amounts precluded from transfer under the Bond Indenture) each day from the Depository Account into the Master Account. The District shall be responsible for all fees, costs and expenses incurred in connection with maintaining the Depository Account, including all fees, costs and expenses of a lockbox which may be deemed desirable and appropriate by Manager; provided, however if and to the extent permitted by applicable Law and the Bonds, at the request of Manager, the Collections or any part thereof, shall be deposited directly into the Master Account.
- (v) Manager is hereby authorized to make payment from the Master Account or other accounts of the District, including the Depository Account, to itself and its Affiliates of any amounts due to it or any of them by the District under this Agreement or otherwise, including, without limitation, the Management Fee, and the reimbursement of expenses and advances, and the District acknowledges that any amounts due to Manager or any of its Affiliates under this Agreement, including without limitation, any Management Fee, shall be of at least as senior a priority as, and shall not be subordinate to the payment of, any amount due to any other creditor of Company, unless otherwise agreed to in writing by Manager and paid as provided in Section 6(f).
- (vi) Manager shall have no liability or responsibility for any loss resulting from the insolvency, malfeasance or non-feasance of any Depository with respect to the District bank accounts.
- (vii) Manager shall have the right to make disbursements from the Master Account, the Depository Account and other the District bank accounts, on behalf of the District in such amounts and at such times as the same are required to operate the Hospital and the Clinics and Other Facilities, as provided in Section 4(i) and to pay the expenses and debts incurred in connection therewith. If the District fails to timely advance funds for to pay expenses, Manager shall have the right, in its sole and absolute discretion, but not the obligation, to advance such funds, as provided in Section 4(i)(i)(1).

(h) Charges and Collections of Accounts.

(i) Manager shall assist the District in billing and collecting for all fees payable with respect to all services, equipment, devices and supplies provided to patients and

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clients at the Hospital and the Clinics and Other Facilities, including the enforcement of the rights of the Hospital and the Clinics and Other Facilities and/or the District as creditor under any contract or in connection with the rendering of any service in accordance with the District's charity care policies. All out-of-pocket costs and expenses relating to the billing and collection services, including without limitation, any fees or expenses payable to collection agencies, shall be for the account of the District.

- (ii) The District shall direct all third party payors to provide Manager with copies of all remittance advices in electronic format or in such other format as shall be agreeable to Manager.
- (iii) The District hereby irrevocably appoints Manager during the Operating Period as its true and lawful attorney-in-fact to take the following actions for and on behalf of and in the name of the District and agrees to execute the Limited Power of Attorney, attached hereto as **Exhibit D** and any other instrument reasonably requested by Manager to evidence such appointment to:
- (1) Bill patients and third party payors (including reimbursement or indemnification from insurance companies and plans, and other third party payors or fiscal intermediaries) in the name and provider number(s) of the District;
- (2) Collect in the name of the District from patients, insurance companies and all other third party payors (other than from Governmental Health Payers), all charges resulting from the provision of items and services rendered to patients of the Hospital and the Clinics and Other Facilities, and to collect capitated payments and all other charges, fees or salaries resulting from or related to the Operations, including but not limited to any and all incentive funds and funds from shared risk and bonus pools under any risk sharing arrangements wherein the District is the provider of medical services, in whole or in part;
- (3) Take possession of and endorse in the name of the District all cash, notes, checks, money orders, insurance payments, and any other instruments received as payment of accounts receivable for deposit into the Depository Account or Master Account or other account, as applicable;
- (4) Deposit all such Collections directly into the Depository Account or the Master Account, other than with respect to Governmental Health Payer receivables;
- (5) Deposit Governmental Health Payer receivables into the Governmental Depository Account;
- (6) Make withdrawa's from the Depository Account and other the District accounts for such purposes as are consistent with the provisions of this Agreement and the Bond Indenture;
- (7) Place accounts for collection, settle and compromise claims, and institute legal action for the recovery of accounts; and
- (8) Execute all instruments or documents necessary or appropriate in connection with the above.

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- (iv) With respect to Government Health Payer patients and clients, Manager shall bill the Governmental Health Payers for same in the name of and on behalf of the District.
- (v) At the District's expense, Manager shall be entitled to obtain the assistance of one or more billing and/or collection agencies to bill and/or collect sums due to the District, in accordance with the District's charity care policies and applicable Law, including, without limitation, Section 9007 of the Patient Protection and Affordable Care Act.
- (vi) Manager, on behalf of the District, may, in its name or in the name of the District, but in any event at the expense of the District, appeal or contest any action taken by any Governmental Authority against the District and/or the Operations, including, without limitation any overpayment claims, or contest by legal proceedings the validity of any Law adverse to the District and/or the Operations; provided, however, that if Manager pursues any such appeal or contest, or asserts any such legal proceeding, the District shall adequately secure and protect Manager from all loss, cost, damage or expense by bond or other means satisfactory to Manager if any action taken by any Governmental Authority against the District and/or the Operations related to such action could result in a loss, cost, damage, or expense to Manager.

(i) Payment of Expenses.

- (i) Manager shall provide oversight of the District's funds in connection with the timely payment of the District's liabilities and other obligations. Manager shall review the payables of the District and shall cause payment thereof to be made from the Depository Account, the Master Account and / or from funds otherwise provided by the District. If the District fails to timely advance funds for such expenses, Manager shall have the right, in its sole discretion, but not the obligation, to advance such funds, as provided in Section 4(j)(i)(1).
- (ii) The District hereby grants to Manager, to the extent permitted by applicable Law, throughout the Operating Period, an exclusive special power of attorney and appoints Manager, to the extent permitted by applicable Law, the District's exclusive true and lawful agent and attorney-in-fact, and Manager hereby accepts such special power of attorney and appointment, to: (i) sign checks, drafts, bank notes or other instruments on behalf of the District, (ii) make withdrawals from the Depository Account, the Master Account or other the District accounts for payments specified in this Agreement and (iii) designate, remove, and change such signatories on such accounts as Manager deems necessary or appropriate from time to time.
- (iii) Upon request of Manager, the District shall execute and deliver to any applicable financial institution such additional documents or instruments as Manager may reasonably request to evidence or effect the special power of attorney granted to Manager by the District pursuant to this Section. The special power of attorney granted herein is coupled with an interest and shall be irrevocable except with Manager's written consent.
- (iv) It is specifically agreed and understood, however, that Manager's obligations under this <u>Section 4</u> are subject to availability of the District funds to make such payments. Nothing contained herein shall obligate Manager to make any such payments from its own funds or resources or to advance any monies whatsoever to the District. If the District fails to timely advance funds, Manager shall have the right, in its sole and absolute discretion, but not the obligation, to advance such funds, as provided in <u>Section 4(i)(i)(1)</u>. Notwithstanding the foregoing, no advance of funds hereunder shall cure the District's default resulting from a failure to timely provide funds as required hereunder. Manager shall not be liable either primarily or as guarantor

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for debts of the Hospital or the Clinics and Other Facilities, or the District under the terms of this Agreement. The District shall be responsible for payment of all legal fees and collection fees incurred by Manager if the District fails to pay its invoices timely.

(j) Pledge of Credit.

- (i) Manager shall not engage in any financial lending, financing or banking actions that result in liens, mortgages, lines of credit, security interest or financial obligations in the name of the District, without the prior written consent of the Governing Body. Prior to requesting consent for approval, Manager shall provide a detailed proposal to the Governing Body describing the amount of required funding, the purpose of the financing, the strategic plan to generate sufficient revenue to repay such financing and all other alternatives evaluated to obtain sufficient funding.
- (1) Notwithstanding anything in this Agreement to the contrary, in the event the District fails to timely advance funds as required hereunder and/or meet any of its payment obligations under this Agreement, Manager shall have the right, but not the obligation, in its sole and absolute discretion, to advance funds or agree to undertake to advance funds to any Person, as a loan to the District to meet the shortfall caused by the District's failure. Such advance of funds by Manager, however, shall not cure any default of the District as a result of its failure to timely provide funds. All sums advanced by Manager pursuant to such agreements or undertakings shall be for the District's account. The District shall pay Manager interest on all advanced funds at the rate set forth in Section 6(e) and the principal upon demand by Manager. Any advance made shall be evidenced by a promissory note issued by the District in an amount equal to the amount advanced.
- (2) To the extent Manager advances funds, this Agreement constitutes a security agreement pursuant to which the District provides Manager with a lien on all of the District's assets, to the extent allowed by Law, and Manager shall have the right to file a Uniform Commercial Code financing statement with respect to such obligation without the signature of the District.
- promissory note on behalf of the District, to the extent permitted by Law. The District hereby irrevocably appoints Manager as its attorney-in-fact coupled with an interest with full power to prepare and execute any documents, instruments and agreements, including, but not limited to, any note evidencing the advance or loan and any Uniform Commercial Code financing statements, continuation statements and other security instruments as may be appropriate to perfect and continue its security interest in favor of Manager.
- (ii) Except as provided in Section 4(j)(i), Manager shall not, under any circumstance, in the name of, or on behalf of, the District borrow any money or execute any promissory note, bill of exchange or other obligation, or dispose of any asset of the District not in the ordinary course of business, without the consent of the Governing Body; and only to the extent allowed by all applicable Law.
- (k) <u>Information Technology</u>. Manager shall provide oversight of the information technology activities associated with the Hospital and the Clinics and Other Facilities. Manager shall be responsible for oversight of the selection, negotiation, installation, and implementation of the information technology systems and structures at the Hospital and the Clinics and Other Facilities consistent with the Annual Budget. Manager shall seek approval from the Governing

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Body of any new systems and/or termination of any existing agreements, which approval shall not be unreasonably withheld. The District shall be responsible for the direct expense of all hardware and software for the information technology activities of the Hospital and the Clinics and Other Facilities. The District shall be responsible for the cost of maintenance and support of all such hardware and software, as well as the training of Manager and the District employees, physicians and other applicable personnel on systems and software provided, however, that Manager shall not incur any expense in excess of \$100,000 unless set forth in the approved Annual Budget or otherwise approved by the Governing Body. For avoidance of doubt, Manager shall not perform the information technology maintenance for the District under the terms of this Agreement. Rather, any such additional services if provided, will be provided by Manager pursuant to the terms of a separate written agreement in exchange for fair market value compensation, and in compliance with applicable Law.

- (I) Internal Audit. Manager shall provide oversight of the District's routine audits of internal procedures and systems, including auditing of billing, information systems, payroll, and other areas as identified and shall perform such internal audits as Manager, in its reasonable discretion, deems necessary for the purposes of providing its services hereunder. External audits, if requested by and performed for the District, shall be the responsibility of the District. All direct, out-of-pocket fees, expenses and charges incurred in connection with such external and internal audits shall be a the District expense. All internal and/or external audit expenses in excess of \$100,000 shall be approved by the Governing Body, unless such expenses are set forth in the approved Annual Budget.
- (m) <u>Managed Care Contracting.</u> Manager shall provide recommendations regarding managed care contracts and rates, and assist the District in the negotiation and consummation of such contracts, and monitoring of contract effectiveness and compliance.

(n) Operating Contracts.

- (i) Manager shall assist the District in negotiating and securing all third party Operating Contracts necessary or desirable for the proper and efficient management and operation of the Hospital and the Clinics and Other Facilities.
- Notwithstanding Section 4(i), Manager may enter into, or modify, supplement, amend, discharge, or terminate, or grant waivers or releases of obligations under such contracts, leases, licenses, instruments, and other agreements ("Operating Contracts") in the name of and at the expense of the District, as may be deemed necessary or advisable by Manager for the furnishing of all professional, consulting, and staffing services, concessions, drugs, supplies, utilities, equipment, property maintenance, insurance and other products, goods, and services as may be necessary or appropriate from time to time for the maintenance and operation of the Hospital and the Clinics and Other Facilities, or as may otherwise be necessary or appropriate to carry out Manager's obligations under this Agreement. Subject to the terms hereof, Manager is hereby expressly authorized, as the District's agent, to execute and deliver any of such Operating Contracts in the name of and on behalf of the District, and presentation of a copy of this Agreement shall constitute conclusive evidence of such agency; provided, however, that, Manager is also authorized to enter into and maintain in its own name any national and regional contracts in which the District may participate, as well as such other contracts for the District which, in the judgment of Manager, are advisable to be entered into in Manager's name. Upon Manager's request, the District shall execute such agreements, contracts, leases. Instruments, documents and other Agreements as Manager shall determine are desirable to facilitate the operation and management of the Hospital and the Clinics and Other Facilities. With respect to all cost and

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expenses associated with Operating Contracts in Manager's name, the District shall reimburse Manager for all such costs and expenses and / or pay such costs and expenses directly, at Manager's discretion. Manager is expressly authorized to contract, in the name and on behalf of the District, for the provision by Manager or its Affiliates of any services to be provided with respect to the Operations.

- (iii) In the event of a termination of this Agreement which results in no further relationship between the District and Manager, Manager shall cause any contracts, including Operating Contracts, it has entered into in its own name to manage and operate the Hospital and the Clinics and Other Facilities pursuant to this Agreement for the benefit of the District to be assigned to the District and the District shall assume the obligations under all such agreements and shall indemnify Manager from and against any liability thereunder.
- (iv) All such Operating Contracts in excess of \$1,000,000 shall be approved by the Governing Body, such consent not to be unreasonably delayed or denied, unless the items or services that are the subject of the Contract have been approved previously in the Annual Budget.
- (v) The expense of such third party contracts shall be a direct expense of the District. Manager shall not be obliged to pay for any the District purchases from its own funds nor shall Manager be obliged to guarantee, directly or indirectly, any debts of the Hospital or the District under the terms of any purchasing arrangement. If the District fails to timely pay amounts due under such arrangements, Manager shall have the right, in its sole discretion, but not the obligation, to advance the funds necessary to satisfy such obligations, as provided in Section 4(i)(i)(1).
- (o) <u>Insurance</u>. Manager shall consult with the District as to the type of insurance or self-insurance, amount of coverage thereunder, deductibles and/or self-insured retentions therefor, premiums therefor, and issuers thereof to be carried with respect to the Hospital and the Clinics and Other Facilities and the Operations. Approval of any change to the types or limits of insurance coverage for the District shall be made by the Governing Body. Manager shall use its commercially reasonable efforts to cause such insurance to be placed and kept in effect at all times; provided, however, the District shall, solely at its own expense, obtain and maintain in full force and effect throughout the Operating Period the following policies of insurance or self-insurance coverage:
- (i) Comprehensive general liability insurance, including personal injury and property damage liability insurance naming the District and Manager as insureds.
- (ii) Property and casualty insurance, including coverage for all Buildings and their contents, including boiler insurance naming the District and Manager as insureds.
- (iii) If deemed necessary by the District or Manager, comprehensive automobile liability insurance naming the District and Manager as insureds.
- (iv) Worker's compensation and employer's liability insurance and other similar insurance naming the District and Manager as insureds for the District's and Manager's employees.
- (v) Professional liability insurance covering all Operations and, to the extent available, directors and officers insurance, naming the District and Manager (and Manager's

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executive employees) as named insureds. The professional liability insurance shall afford minimum protection (which may be effectuated through primary and/or excess coverage) of not less than \$1,000,000.00 combined single limit for damage in any one occurrence and not less than \$3,000,000.00 aggregate for all occurrences. The insurer must be licensed by the California Department of Insurance and have a general policyholders rating of not less than A-X or better by Best's Key Rating Guide and with a claims paying ability rating from S&P of at least AA or an equivalent rating from another rating agency acceptable to Manager. Manager may require that the District obtain from the insurer a statement as to good standing with the California Department of Insurance.

(vi) Commercial umbrella or excess liability coverage and, to the extent available, regulatory insurance coverage, covering all Operations, naming the District and Manager as named insureds. The commercial Umbrella and Excessive Liability Insurance shall afford minimum protection (which may be effectuated through primary and/or excess coverage) of not less than \$1,000,000.00 combined single limit for damage in any one occurrence and not less than \$3,000,000.00 aggregate for all occurrences, insuring Manager and the District and their respective employees and representatives in connection with Operations. The insurer must be licensed by the California Department of Insurance and have a general policyholders rating of not less than A-X or better by Best's Key Rating Guide and with a claims paying ability rating from S&P of at least AA or an equivalent rating from another rating agency acceptable to Manager. Manager may require that the District obtain from the insurer a statement as to good standing with the California Department of Insurance.

- (p) <u>Insurance Specifications</u>. The foregoing insurance shall meet the following specifications:
- (i) All such policies of insurance shall be in such amounts as are deemed necessary by the District and Manager (but in no event less than the amounts set forth above) and shall contain a waiver of rights of subrogation clause against Manager and the District, to the maximum extent permitted under applicable Laws. The parties and their respective Affiliates shall not assert against the others, and each does hereby waive with respect to the others, any claims for any losses, damages, liabilities or expenses (including attorneys' fees) incurred or sustained by any of them on account of damage or injury to Persons or property arising out of the ownership, operation and/or maintenance of the Hospital and the Clinics and Other Facilities, to the extent that the same would be covered and paid by the insurance required to be carried hereunder. The District shall present such policies of insurance to Manager for review, upon request by Manager.
- (ii) The District shall cause Manager, and any Person affiliated with Manger, that Manager so directs, to be named as additional insureds on the liability insurance coverage described above and on any fidelity bond (if any). It is the intention of the parties that the insurance and bonds (if any) maintained by the District with respect to the Operations shall protect both the District and Manager and will be primary insurance for both parties for any and all losses covered thereby.
- (iii) Certificates of insurance for the above coverages and a copy of the bond (if any) and accompanying endorsement naming Manager and/or Manager's employees (specifying his/her position), as applicable, shall be provided to Manager within thirty (30) days of the Effective Date and thereafter within thirty (30) days (i) of policy or bond (if any) renewal or replacement and (ii) of a request by Manager. All such policies shall provide that the subject policy may not be canceled, modified or reduced (including, without limitation, any amendment that would

reduce the scope or limit coverage or remove any endorsement to such policy or cause the same to no longer be in full force and effect) except upon not less than thirty (30) days prior written notice to Manager. Originals of each renewal policy or certificates therefore from the insurers evidencing the existence thereof shall be provided to Manager at least thirty (30) days prior to, but not later than, the expiration or termination dates of the applicable policy. In addition, the District shall notify Manager in writing of any reduction or cancellation, increase of deductible or material modification of any term or condition of any of insurance coverage required herein within twenty-four (24) hours of receipt.

- (iv) Manager reserves the right to procure, at the District's cost, any or all of the foregoing required insurance coverage, if the District fails or refuses to do so, or if Manager in its sole discretion determines that Manager's procuring of such insurance is most efficient and/or in the financial benefit of Manager and/or the District. Manager is not required to act under this Section 4(p) and shall not be liable for its failure to effect or maintain recommended insurance upon the District's failure to do so.
- (v) Manager may obtain similar coverages for its benefit by taking out policies with such insurance companies as may be selected by Manager. Notwithstanding anything herein to the contrary, any insurance obtained by Manager hereunder may, at Manager's election, cover only Manager's interest. All direct, out-of-pocket fees, expenses and charges incurred in connection with obtaining such insurance shall be the District expenses, even if the insurance protects only Manager's interests.
- (vi) If, during the Operating Period, the District is covered by general liability, professional liability, or other liability insurance on a "claims made" basis, then at least ten (10) days before the termination of this Agreement, the District shall procure and maintain, at the District's sole cost and expense, an extended reporting endorsement or "tail" insurance coverage for a period of at least four (4) years after the termination date of this Agreement, with coverage limits and deductible amounts equivalent to those required hereunder on the date immediately preceding the termination of this Agreement for such coverage for general, professional and other liability claims reported after the termination of this Agreement but concerning services provided during the Operating Period or the term of the claims made policy. The District shall provide Manager with a certificate evidencing such coverage no later than ten (10) days before the termination of this Agreement. The District shall be named as the primary insured party on each policy of tail insurance and Manager shall be named as an additional insured. This Section will survive the termination or expiration of the Agreement.
- (vii) To the extent any insurance is placed through a self-insurance program or captive insurance program, the District shall assure that such insurance shall comply with all applicable Law, if such self-insurance or captive program is domiciled outside the United States, and the District shall assure that such coverage shall be, as appropriate, reinsured by reinsurers acceptable to Manager, in Manager's sole and absolute discretion.

'(q) Purchasing.

(i) Manager shall be responsible for the oversight and management of the District's purchasing systems and procedures for the Operations at the supervisory / management level, including but not limited to oversight of:

(1) Capital purchasing;

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- (2) Researching and negotiating equipment based on Hospital and the Clinics and Other Facilities' needs, specifications, and the Annual Budget;

 (3) Reviewing oversight of inventory par levels (monthly audits);
- and/or
- (ii) The District shall be responsible for the direct expense of all purchases and for all purchasing expenses, including but not limited to utilities, concessions, drugs, equipment, supplies, furniture or furnishings, inventory items, linens, machinery, medicines, and services.

Department purchasing structures and systems.

(iii) In furtherance of the foregoing, all capital and other expenditures made shall be subject to the purchasing and procurement policies and procedures of the District, its Bylaws, and applicable Law.

(r) Marketing and Communications.

(4)

(i) Manager shall provide consultation, advice and oversight related to marketing, advertising, and promotional issues, as well as marketing strategies and policies, as it deems necessary in its sole and absolute discretion.

(ii) Manager shall:

- (1) Provide direction and advice regarding the marketing program for the Hospital and the Clinics and Other Facilities which shall be reasonably designed to inform and educate health care professionals and the general public served by the District of the existence of one or more of the services offered by the District.
- (2) Cause, to the extent required by applicable Law, including Internal Revenue Code §501(r), a community needs health assessment to be prepared identifying the health and welfare needs of the residents who reside in the communities served by the District, and propose an implementation strategy to meet the outstanding community health needs identified in the assessment.
- (3) Cause to be prepared and distributed such descriptive booklets, brochures or pamphlets as Manager determines are necessary, in its sole and absolute discretion, to inform health care professionals and members of the public of the nature and requirements of State and Federal reimbursement programs for patients and how the same relate to the services offered at the District.
- (iii) All direct, out-of-pocket fees, expenses and charges incurred in connection with marketing, advertising, and promotional activities shall be at the sole cost and expense of the District.

(s) Medical Records.

(i) Manager shall be responsible for the oversight of the District's medical records activities at director and executive levels, including development of department strategies and systems and planning.

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- (ii) During and following the expiration of the Operating Period, all records of the District shall remain the property of the District.
- (iii) All patient medical records shall be treated as confidential so as to comply with all applicable Laws regarding the confidentiality of patient records, including, without limitation, the privacy standards promulgated under HIPAA.
- (iv) Manager shall be a "Business Associate" of the District, as that term is defined in the regulations implementing HIPAA, and Manager's use of "Protected Health Information," as that term is defined in the regulations implementing HIPAA ("PHI"). Manager shall execute and comply with the Business Associate Agreement previously executed by the parties.
- (v) Manager shall notify the District of any data breach that may occur at the Hospital and the Clinics and Other Facilities, promptly after Manager becomes aware of same.
- (t) <u>Additional Reports.</u> Manager agrees to prepare, cause to be prepared or otherwise make available reports regarding the Operations as follows:
- (i) Within forty-five (45) days after the end of each fiscal quarter, Manager shall make available to the District the following information:
- (1) Relevant utilization statistics for the District for the prior quarter, including but not limited to patient volume and payor mix; and
- (2) Financial statements and budget analysis for the District for the prior quarter, as provided in <u>Section 7(c)</u>.
- (ii) Manager shall provide to the Governing Body, on at least thirty (30) calendar days' notice, or sooner if necessary, to implement such required action, a description of any needed or discontinued services, refinancing proposals, expansion plans or material changes in operating procedures. The proposal shall explain the reasons for the proposed activity.
- (u) Agency. Subject to (i) approval of the Governing Body for acts outside of the ordinary course of the Hospital and the Clinics and Other Facilities' businesses, and (ii) the terms hereof, Manager shall have the right to act as the agent of the District and/or the Hospital and the Clinics and Other Facilities in the procuring of licenses, permits and other approvals, the payment and collection of accounts and in all other activities necessary or appropriate or useful to Manager in the carrying out of its duties as specified herein.

(v) Construction Project Advice.

(i) Manager shall provide the District with advice and recommendations regarding the current Hospital construction project (involving the construction of a new tower commonly referred to as the Tower No. 1 Expansion Project (the "Project")) and will assist the District in its coordination of the Project. Any Consultants engaged by Manager in this regard shall be compensated as provided in Section 4(b)(xii). Manager shall not be a contractor on the Project and shall not have control over, charge of or responsibility for, the means, methods, techniques, sequences, procedures, or for the safety precautions and programs related to such Project. Manager shall not have control over or be responsible for the District's architects or contractors or their agents, nor shall Manager be deemed to be responsible for the construction of the Project, directly or indirectly or the funding of such Project.

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- (ii) Manager shall provide consultation and advice, and shall assist the District in the District's efforts to discharge all of the field operations requirements and responsibilities of the District as the owner of the Project as required under the construction contracts between the District and its contractors (the "Contract Documents") and to cause the District's contractors to perform the work required to construct the Project in accordance with the Contract Documents. In this regard, Manager shall provide recommendations to the District to assist in its evaluation of the status of the on-going construction associated with the Project. Manager shall provide on-site administration of the Contract Documents in cooperation with the Project architect. Manager shall provide assistance, including administrative, management and related services, to coordinate scheduled activities and responsibilities of the contractors, and Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Project work.
- (iii) Manager shall endeavor to obtain satisfactory performance from the District's contractors, but shall have no liability for any failure of performance by any of such contractors. Manager shall have no liability for any design defect or other matter which is the responsibility of the Project architect. Manager shall recommend courses of action to the District when requirements of the Contract Documents are not being fulfilled. Manager shall report to the District any defects or deficiencies in the work of any contractor or their agents or employees, or any other Person performing construction on or providing materials or equipment to the Project of which Manager obtains actual knowledge. Notwithstanding the foregoing, Manager shall have no obligation to investigate or take active steps to determine the existence of any such defects or deficiencies, nor shall Manager be liable, for any failure to timely communicate any such defect or deficiency to the District. Manager may recommend the rejection of any deficient or defective work to the District, if such work does not conform to the Contract Documents; however, the failure of Manager to recommend rejection of any such work shall not constitute Manager's approval or acceptance of the work.
- (iv) Manager shall review requests for changes in the construction contracts, assist in negotiating contractors' proposals, and provide recommendations to the Project architect and the District in connection therewith.
- (v) Manager shall monitor and evaluate actual costs for the construction work, and estimates for uncompleted work, and shall advise the District as to variances between actual and budgeted or estimated costs. Manager shall notify the District if there are any apparent inconsistencies or inaccuracies in the information presented by the District's contractors. Manager shall also report the contractors' cost control information to the District.
- (vi) Manager shall assist the District in developing and implementing procedures for the review and processing of applications for payment from the contractors for progress and final payments.
- (vii) Manager shall record the progress of the Project. On a monthly basis or otherwise as requested by the District, Manager shall submit written or oral progress reports to the District and attend monthly Governing Body meetings requested by the District.
- (viii) Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work of any contractors.

(ix) Manager shall make recommendations if it determines that Consultants are reasonably required for the Project, and shall assist the District in selecting and engaging such Consultants. Manager shall supervise and coordinate Project Consultants.

(x) Limitations.

- (1) Manager has no authority to execute any Contract Documents or otherwise bind the District to any transactions with respect to the Project construction. Manager shall not provide any legal services or architectural services with respect to the Project. The District agrees that although Manager will make recommendations, Manager shall not take any action in connection with the implementation of such recommendations without the District's prior approval.
- (2) The District will at all times maintain a meaningful and substantial involvement in all phases of the Project, and hereby accepts responsibility for the results of the Project. Manager's recommendations concerning terms of the Construction Contracts shall be subject to review and approval of the District and the District's attorneys or other advisers.
- (3) The District acknowledges that Manager does not guarantee any particular results, notwithstanding projections which may be made by Manager. Manager's projections and forward looking statements are based on estimates and expectations, and reasonably available data from contractors, architects and others, and as a result are inherently uncertain. Actual results could differ materially from those anticipated as a result of a variety of factors.
- (4) Neither Manager nor Manager Parties shall be liable to the District for any claims, demands, costs, expenses, liabilities or obligations of any nature relating to the Project, ("Claims"), except to the extent resulting from the willful misconduct of Manager or Manager Parties. Manager and Manager Parties may be liable to the District for general and direct damages, but in no event shall Manager or any Manager Parties be liable to the District for any consequential damages, including loss of use, special, indirect or incidental damages. Manager and Manager Parties may be liable for punitive or exemplary damages to the extent resulting from their willful misconduct.
- Manager Parties free and harmless from and against all Claims (including reasonable attorney's fees), except to the extent resulting from the willful misconduct of Manager or Manager Parties. It is understood and agreed that, Manager and Manager Parties shall have no liability whatsoever for any actions or failure to act which arose prior to January 10, 2014, including Claims which relate in any way to construction activities which occurred prior to that date ("Pre-existing Claims"). In the event that any Claims are made against Manager or any Manager Party which may include Pre-existing Claims, then the indemnification and defense obligations of the District shall apply, even if they also involve Claims which are not Pre-existing Claims. However, in the event of a determination by a court or arbitrator that any Claims for which indemnification was provided by the District were not in fact Pre-Existing Claims and were not Claims for which indemnification is otherwise required hereunder, then Manager shall be liable to reimburse the District for any reasonable costs or expenses incurred by the District in connection with the defense or indemnification.

- (6) In circumstances where any limitation on damages or indemnification provision hereunder is unenforceable or unavailable for any reason, the District shall contribute to any Claims, relating to the Services provided hereunder by Manager, in such proportion proportional to the relative fault of the parties bears to all other conduct giving rise to such Claim.
- (7) Neither Manager nor any Manager Parties, or any of their respective Affiliates, shall have any liability hereunder to the District, and the District agrees it will not bring any action against any such Persons, except to the extent caused by the willful misconduct of such Persons. Without limiting the foregoing, such Affiliates are intended third-party beneficiaries of these terms and may in their own right enforce such terms.
- (8) The provisions of Section 4(v)(x)(4)-(7) shall survive the expiration or termination of this Agreement.

5. Legal Compliance.

- (a) <u>Compliance Plan.</u> Manager has received a copy of the District's Compliance Policies and Procedures, including the Code of Conduct and the Physician Referral, Stark Law, and Anti-Kickback policies and procedures together with a copy of the District's Corporate Integrity Agreement with the HHS Office of Inspector General dated July 20, 2009 (the "<u>CIA</u>"). Manager shall abide by these policies and procedures and applicable Law. Any recommendations and/or revisions of such policies made by Manager must be approved by the Governing Body. Manager will be given prompt written notice of any changes made to the foregoing. Manager may develop and recommend changes to the District's existing Compliance Plan (the "<u>Compliance Plan</u>") for implementation during the Operating Period. Any such recommendations and/or revisions to the Compliance Plan must be approved by the Governing Body. Manager shall use its commercially reasonable efforts to support the Compliance Plan. All costs of developing, implementing and maintaining the Compliance Plan shall be borne by the District.
- (b) <u>Government Regulations</u>. On behalf of the District, Manager shall, subject to the limitations set forth herein, use its reasonable commercial efforts to help assure that: (1) the District continuously complies with all material applicable Laws, including without limitation, Hospital Law, State and Federal False Claims Act, Civil Monetary Penalty Law, State and Federal Anti-Kickback statutes, State and Federal self-referral prohibitions and applicable Medicare conditions of coverage and/or participation and (2) the District retains and maintains in good standing all necessary accreditations, licenses, permits, approvals and authorizations required for the ongoing operation of the Hospital and the Clinics and Other Facilities.
- (c) <u>Accreditation Compliance</u>. Manager shall, subject to the limitations set forth herein, take all steps necessary to assist the District to continue meeting the applicable accreditation agency's accreditation standards, as they exist or may be changed from time-to-time, and as may be applicable to the Hospital and the Clinics and Other Facilities' then current accreditation(s). Manager shall have the right to select and/or change the applicable accreditation agency for the Hospital, and if applicable, the Clinics and Other Facilities, in its sole and absolute discretion.
- (d) <u>Licensure</u>. Manager shall not act in a manner which adversely affects the licensure of the District by the State as a Medicare participating acute care hospital (or any other Medicare reimbursement designation as may be agreed to by the parties). Within thirty (30) days of receipt by the District or Manager of any final report or written assessment concerning the

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licensure of the District by the State as an acute care hospital or the accreditation of the District, Manager shall furnish a copy of such report to the District.

- (e) <u>HIPAA Compliance</u>. Manager shall comply with the applicable provisions of the Administrative Simplification and Privacy Rules of the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations promulgated pursuant thereto, and any related or applicable privacy Law regarding medical information and protected health information.
- (f) <u>Ineligible Persons Disclosure Obligation</u>. Manager shall use reasonable commercial efforts to monitor that none of Manager's or the District's employees employed at the Hospital and the Clinics and Other Facilities have been sanctioned, debarred or suspended or otherwise deemed ineligible to participate in Medicare, Medicaid or other Federal health care programs, and procurement, or non-procurement programs (collectively, an "<u>Ineligible Person</u>"). Manager represents to the District that Manager is not an Ineligible Person nor has any pending proceedings or received notice of any action or proceeding to exclude, debar, suspend, or otherwise declare Manager ineligible under any federally funded health program. Manager shall notify the District within three (3) business days after becoming aware of any fact or circumstance that would make Manager an Ineligible Person.
- Access to Records. Manager shall, in accordance with Section 1395x(v)(1) of Title 42 United States Code until the expiration of four (4) years, or longer as may be required by applicable Law, after the termination of this Agreement, make available upon written request to the Secretary of the United States Department of Health and Human Services, or, upon request, to the Comptroller General of the United States Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to verify the nature and extent of the costs of the services provided by Manager under this Agreement. Manager further agrees that in the event Manager carries out any duties under this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve-month period with a related organization, such agreement shall contain a clause to the effect that until expiration of four (4) years, or longer as may be required by Law, after the furnishing of such services pursuant to such subcontract, the related organization shall make available upon written request to the Secretary of the United States Department of Health and Human Services, or, upon request, to the Comptroller General of the United States Accounting Office, or any of their duly authorized representatives, a copy of such contract and such books, documents and records of such organizations as are necessary to verify the nature and extent of such costs. This Section is included pursuant to and is governed by the requirements of federal Law. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by the parties or any of the parties' representatives by virtue of this Agreement.
- (h) <u>No Obligation to Refer Patients</u>. Nothing contained in this Agreement shall require (directly or indirectly, explicitly or implicitly) either Manager or its Affiliates or the District or its Affiliates, to refer any patients to one another or to use the Hospital or the Clinics or Other Facilities as a precondition to receiving the benefits set forth herein.

6. Management Fee.

(a) <u>Management Fee.</u> As Manager's fee for the performance of the management services under this Agreement, Manager shall receive monthly (in advance on the first day of each month) a fee (the "<u>Management Fee</u>") in the amount of Two Hundred Twenty Five Thousand Dollars (\$225,000). Effective as of each January 1st, commencing January 1, 2015, the Management Fee shall be increased as provided in <u>Section 6(b)</u>.

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(b) CPI Adjustment.

- (i) "CPI" means the monthly index of the U.S. City Average Consumer Price Index for Urban Wage Earners and Clerical Workers Medical Care Services (1982-84 equals 100) published by the United States Department of Labor, Bureau of Labor Statistics or any successor agency that shall issue such index. In the event that the CPI is discontinued for any reason, the parties shall use such other index, or comparable statistics, on the cost of medical care services in the United States, as shall be computed and published by any agency of the United States or, if no such index is published by any agency of the United States, by a responsible financial periodical of recognized authority.
- (ii) Beginning on January 1, 2015, and every year thereafter, the Management Fee shall each be adjusted for inflation as follows:
- (1) The then existing Management Fee shall be multiplied by the greater of (i) the CPI percentage increase using the latest published data since the last adjustment or (ii) five percent (5%) ("CPI Increase");
- (2) The then existing Management Fee shall then be added to the CPI Increase ("Net Adjusted Management Fee"); and
- (3) The Net Adjusted Management Fee will then be multiplied by 1.01 to determine the Management Fee for the next ensuing calendar year.
- (4) For example, the latest published CPI in January 2015 (e.g. November 2014) will be compared to the CPI for November 2013 (assuming that was the latest available published data) and the 2014 Management Fee will be multiplied by the percentage difference. Assuming a three percent increase, the Management Fee of \$225,000 would be increased by \$6,750 for a new monthly Net Adjusted Management Fee of \$231,750. That amount would then be multiplied by 1.01 resulting in a new monthly Management Fee of \$234,067.50.
- (c) <u>Expenses</u>. In addition to the Management Fee, Manager shall be reimbursed monthly by the District for (i) expenses expressly made reimbursable hereunder together with (ii) other usual, customary, and commercially reasonable out-of-pocket expenses incurred on behalf of the District, in accordance with the approved Annual Budget, or with approval from the Governing Body, if such fees are in excess of the amount in the approved Annual Budget. Manager shall not be reimbursed for any indirect or overhead expenses of Manager or its Affiliates.
- (d) <u>Operating Expenses</u>. Except as otherwise provided in this Agreement, all of the costs and expenses of maintaining and operating the Hospital and the Clinics and Other Facilities shall be the sole cost and expense of the District, and shall not be expenses of Manager. Expenses shall include, without limitation:
- (i) any operating or non-operating expense incurred in the provision of services to the District (unless specifically excluded hereunder); and
- (ii) The cost of any employee or Consultant that provides services at or in connection with the Hospital or the Clinics or Other Facilities for improved clinic performance, such as management, billing and collections, business office consultation, accounting and legal services, including salaries, benefits, other compensation, travel costs, and other expenses, but only when such services are coordinated by Manager.

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- (e) <u>Late Payments</u>. If payment of amounts due hereunder, including Management Fees, Employee Lease Payments and reimbursement of other amounts, are not made on the due date, then interest shall accrue on any unpaid amounts for each day beyond the due date at a rate equal to the lesser of: (a) one percent (1.0%) per month or (b) the maximum non-usurious interest rate allowable by Law.
- (f) <u>Senior Indebtedness Status</u>. The obligations of the District under this Agreement rank and shall rank at least senior in priority of payment to all other unsecured debt of the District. Fund transfers and other payments received by the District shall be directed, regardless of the payment purpose indicated in the payment document, according to the following priority ranking: (1) payment of the Bonds; (2) payment of the Management Fee and other amounts due hereunder and (3) all other debts of the District.
- (i) <u>Setoff.</u> Notwithstanding any provision of this Agreement to the contrary, Manager shall have the right from time to time to setoff any amounts owed by the District to Manager against any amounts owed by Manager to the District and/or from any funds of the District over which Manager has a power of attorney or right of disbursement, whether pursuant to this Agreement or otherwise.

7. Books and Records.

- (a) <u>Maintenance of Books and Records.</u> Manager shall supervise the maintenance of the books of account covering the operation of the District. Such books of account shall be maintained on an accrual basis in accordance with GAAP.
- (b) <u>Accounting</u>. Manager shall be responsible for the oversight of Hospital and the Clinics and Other Facilities' accounting functions.
- (c) <u>Reports and Financial Statements</u>. Manager shall from time to time deliver to the Governing Body, from the District's data, the reports and financial statements reasonably requested by the Governing Body, as well as any other reports or financial statements required by the terms of this Agreement. Oversight shall include consultation with respect to Hospital and the Clinics and Other Facilities:
 - (i) General ledger / financial accounting;
 - (ii) Accounts payable;
 - (iii) Payroll;
- (iv) Facilitation of Hospital and the Clinics and Other Facilities annual audit; fees paid to independent accountants, however, shall be the responsibility of the District;
- (v) Cost reporting. Year-end information required for preparation of Medicare and MediCal cost reports shall be available to the District, and at the District's direction, to its accountants, prior to one hundred twenty (120) days into the year following the year for which they are prepared; and
 - (vi) Monthly bank reconciliation.

(d) Financial Statements.

- (i) Monthly financial statements, including income statements, balance sheets, statement of cash flows. Such statements shall generally be available to the District by the 20th day of the month following the applicable period.
- (ii) Quarterly financial statements including unaudited financial statements reflecting the operations of the District for such quarter. Such statements shall generally be available to the District by the 45th day following the end of each applicable quarter. Quarterly statements shall also include Manager's usual and customary statistical and performance measures.
- (iii) Annual financial statements, including an unaudited balance sheet of the District dated as of the end of the fiscal year and a related statement of income or loss for the District for such fiscal year. Year-end income statements, shall be available to the District, and at the District's direction, to its accountants, prior to ninety (90) days into the year following the year for which they are prepared.

(e) Audit.

- (i) If the District so elects, such financial statements will be certified in the customary manner by an independent certified public accountant approved by the District. The expense of any such independent accountants shall be borne by the District.
- (ii) Manager shall respond, in writing, to any and all recommendations made by the District's independent auditors, which response shall either acknowledge that an audit proposal or recommendation has been implemented or, if not, the reasons why not.
- (f) <u>Financial Reporting Expenses</u>. Fees paid to independent firms and professionals in connection with the foregoing together with the direct, out-of-pocket fees, expenses and charges incurred in connection with the preparation of such shall be the District expenses.
- (g) <u>Inspection of Records</u>. Authorized agents of the District shall have the right at all reasonable times during usual business hours, at the District's expense, to audit, examine and make copies of or extracts from the books of account of the District maintained by Manager. Such right may be exercised through any agent, independent public accountant or employee of the District designated by the District.
- (h) <u>Confidentiality</u>. The parties agree that: (a) neither party will disclose any secrets or confidential technology, proprietary information, or trade secrets of the other party without the prior written consent of the transmitting party, except (i) to the receiving party's agents, advisors, auditors and representatives; or (ii) as may be necessary by reason of legal, accounting or regulatory requirements beyond the reasonable control of the recipient party; and (b) should this Agreement expire or terminate, neither party will take or retain any papers, records, files, computer programs and software, other documents or copies thereof, or other confidential information of any kind belonging to the other party, except for copies of same as may be reasonably necessary to defend any anticipated litigation or respond to claims or pursuant to ordinary data backup or storage processes.

8. Indemnification and Liabilities.

- District Indemnity Obligation. Manager does not hereby assume any of the obligations, liabilities or debts of the District or the Hospital or the Clinics and Other Facilities, except as otherwise expressly provided herein, and shall not, by virtue of its performance hereunder, assume or become liable for any of such obligations, debts or liabilities. The District hereby agrees to indemnify, defend and hold Manager harmless from and against any and all claims, actions, liabilities, losses, costs and expenses of any nature whatsoever, including reasonable attorneys' fees and other costs of investigating and defending any such claim or action, asserted against Manager on account of any of the obligations, liabilities or debts of the District or the Hospital or the Clinics and Other Facilities, except for demands arising from Manager's willful misconduct. The District further hereby agrees to defend, hold harmless and indemnify Manager and Manager Parties from and against any and all claims, actions, liabilities, losses, costs and expenses of any kind imposed on account of or arising out of actions taken by Manager or Manager Parties in what Manager or any such Person reasonably believed to be within the scope of their responsibilities under this Agreement, except for acts of willful misconduct. However, in no event shall Manager or any Manager Parties be liable to the District for any loss of use, goodwill, revenues or profils, or any consequential, special, indirect or incidental loss, damage or expense, or for punitive or exemplary damages, except for punitive or exemplary damages to the extent resulting from the willful misconduct of Manager or Manager Parties. This Section shall survive the expiration or termination of this Agreement. The foregoing indemnification is an addition to and not in limitation of the indemnification provisions as they relate to agents of the District (it being agreed that Manager is an agent of the District for that purpose), as set forth in the District's Bylaws, and any other indemnification provisions set forth in this Agreement.
- (b) <u>Manager Not Liable for District Liabilities</u>. The District is and shall be fully liable and legally accountable at all times to all patients and Governmental Authorities for all patient care and funds and all other aspects of the operation and maintenance of the Hospital and the Clinics and Other Facilities. Manager shall have absolutely no obligation or duty to act for or on behalf of the District with respect to any matter which is not directly related to Manager's obligation to provide the administrative and management services described herein to the Hospital and the Clinics and Other Facilities, as and to the extent provided herein. Manager shall not be or become liable for any of the existing or future obligations, liabilities, or debts of the District, or for any of the obligations of the Hospital and the Clinics and Other Facilities. This Section shall survive the expiration or termination of this Agreement.
- (c) <u>Manager Not Liable for Condition of Buildings or Equipment.</u> Notwithstanding anything contained herein to the contrary, in no event shall Manager be liable for any damages arising from, incident to, or in connection with, the physical condition (including the environmental condition) of the Buildings or other structures owned or leased by the District, or the land upon which such Buildings or other structures are situated, or any of the equipment located thereon, and any such damages as may arise shall be the sole responsibility of the District, as a the District expense, except to the extent that Manager engages in willful misconduct in carrying out its responsibilities hereunder, in which event Manager's liability shall be limited to amounts not covered by applicable insurance policies. In connection with the foregoing, the District shall, with the assistance of Manager, comply with any and all applicable fire and safety codes. This Section shall survive the expiration or termination of this Agreement.
- (d) <u>Manager Not Liable for Acts or Omissions of the District's Agents.</u> Manager shall not be responsible for the acts or omissions of any of the District's managers, officers, directors, Governing Body, agents, employees, contractors, subcontractors or any other Persons

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performing any work or rendering any services in connection with the operation, management, ownership or other use of the Hospital and the Clinics and Other Facilities, or any Consultants or other Persons engaged with respect thereto. This Section shall survive the expiration or termination of this Agreement.

- (e) <u>Manager Not Liable for Consultants' Fees and Other Financial Obligations</u>. The District, and not Manager, shall be responsible for all fees and other compensation charged by Consultants and other Persons engaged by the District (or by Manager on behalf of the District in accordance with the terms hereof) to provide services related to the Hospital and the Clinics and Other Facilities. Manager shall be responsible for reviewing such fees, and the District shall timely provide Manager with copies of all bills, invoices, and other information relating to such fees.
- (f) Release. Because of the unique services to be provided by Manager hereunder, neither Manager nor any Manager Parties shall be liable to the District for any damages or loss of any kind including, without limitation: (i) direct damages; (ii) consequential damages; (iii) loss of profits; (iv) business interruption; (v) damage to property or death or injury to Persons from any cause whatsoever including, without limitation, professional liability or malpractice, acts of vandalism, loss of trade secrets or other confidential information; or (vi) damage, loss, or injury caused by a defect in the structure of the Hospital and the Clinics and Other Facilities, power failure, fire, strikes, shortage of supplies, or any cause whatsoever in or about the Hospital and the Clinics and Other Facilities or any part thereof, unless such claims, losses, costs, damages or expenses are the result of the willful misconduct of Manager or Manager Parties. This Section shall survive the expiration or termination of this Agreement.
- (g) <u>Manager Indemnity Obligation</u>. Manager shall indemnify, defend and hold the District harmless from and against any and all claims, actions, liabilities, losses, costs and expenses of any nature whatsoever, including reasonable attorneys' fees and other costs of investigating and defending any such claim or action, imposed on the District including its officers, directors, partners, employees and agents on account of or arising out of any breach of the terms hereof by Manager, and resulting from the willful misconduct of Manager or any Manager Parties. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT (INCLUDING ANY INDEMNIFICATION OBLIGATIONS), IN NO EVENT SHALL MANAGER BE LIABLE (WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT OR TORT OR BASED ON A WARRANTY OR OTHERWISE) FOR (I) FAILURE TO REALIZE SAVINGS OR LOSS OF PROFITS, REVENUE, OR ANY OTHER INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, AND (II) DIRECT AND OTHER DAMAGES IN EXCESS OF THE AMOUNT OF MANAGEMENT FEES EARNED BY MANAGER UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS PRIOR TO THE DATE OF THE APPLICABLE CLAIM FOR DAMAGES, IN EACH CASE, EVEN IF MANAGER HAS BEEN ADVISED OF POSSIBILITY OF SUCH DAMAGES.

9. Joint Venture.

(a) Covenant to Enter Into Joint Operating Agreement.

(i) Attached hereto as Exhibit B is the Interim Joint Operating Agreement (the "Interim Operating Agreement") that the parties have executed and shall become effective, upon written notice from Manager, following: (i) Manager's or the District's receipt of consent thereto from the District's Bond trustee under the general obligation bonds and revenue bonds issued by the District prior to the date hereof, or hereafter issued with the concurrence of Manager (collectively, the "Bonds"); (ii) any required notices to the Attorney General regarding the transaction, if any, have been provided, including any that may be required pursuant to Cal. Code

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Regs., tit. 11, § 999.40; and (iii) any required approvals from the Attorney General with respect to the charitable care assumption by Manager thereunder have been received, if any. The District shall fully cooperate with Manager's efforts to obtain the consent of such Bond trustee and the Attorney General, and the District shall promptly make such requests and take such actions as Manager shall request to obtain the Bond trustee's and Attorney General's consent(s). Efforts to procure such consent shall be commenced promptly after the Effective Date.

- Attached hereto as Exhibit C is the form of Joint Operating Agreement (the "Long Term Operating Agreement") that the parties have executed and shall become effective, upon written notice from Manager to the District after: (i) all Bonds which require compliance with Rev. Proc. 97-13 (or any successor regulatory requirement thereto containing similar limitations), have been repaid or otherwise defeased or the Internal Revenue Code limitations and conditions to the proposed transaction set forth in the Long Term Operating Agreement have been waived; (ii) any required notices to the Attorney General regarding the transaction, if any, have been provided, including any that may be required pursuant to Cal. Code Regs., tit. 11, § 999.40; and (iii) any required approvals from the Attorney General with respect to the charitable care assumption by Manager thereunder have been received, if any. The parties may enter into the Long Term Operating Agreement, whether the conditions described herein occur prior to or following entry into the Interim Operating Agreement. The District shall use its reasonable commercial efforts to repay or defease the Bonds as soon as reasonably practicable following the Effective Date. The District shall fully cooperate with Manager's efforts to obtain the consent of the Attorney General, and the District shall promptly make such requests and take such actions as Manager shall request to obtain the Attorney General's consent.
- (iii) The District agrees that Manager shall have the right to determine and direct the strategy and process by which the District and Manager effectuate the Interim Operating Agreement and the Long Term Operating Agreement (collectively, the "Operating Agreements"). Manager shall have the right to take the lead in all meetings and communications with the Bond trustee(s) and / or any other party whose consent is required to effectuate the Operating Agreements, including by determining the appropriate timing of any such meeting or communications (including the timing of the submission of any filing with, or the response to any request by, any consent party or any action to be taken pursuant to this Section).
- The District shall: (a) promptly give all notices which either party deems necessary, proper or advisable to the Bond trustee(s) and other applicable third parties which may be necessary or deemed desirable by Manager in connection with effectuating the Operating Agreements and the consummation of the transactions contemplated thereby; (b) use its best efforts to obtain all Bond trustee and other approvals, consents, permits, authorizations, and orders necessary, proper or deemed desirable by Manager in connection with effectuating the Operating Agreements and the consummation of the transactions contemplated thereby; (c) Permit Manager to review in advance, and consult with Manager on, any proposed filing, submission or communication (whether verbal or written) by the District or its Affiliates, and (d) give Manager the opportunity to attend and participate at any meeting with the Bond trustee(s) or any other party's representatives that are necessary, proper or advisable to effectuate the Operating Agreements. The District and its accountants, and attorneys shall cooperate fully with Manager in the preparation of any statements or applications made by Manager to the Bond trustee(s) and other applicable parties whose consent is required to effectuate the Operating Agreements and the transactions contemplated thereby and to furnish Manager with all information concerning the District necessary or deemed desirable by Manager for inclusion in such statements and applications, including, without limitation, all requisite financial statements and schedules.

(v) Between the date hereof and the effective dates of the Operating Agreements, the District shall promptly notify Manager of (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Operating Agreements becoming effective, (ii) any notice or communication from the Bond trustee(s) or any other party form whom consent is required, and (iii) any action or proceeding commenced or, to the knowledge of the District, threatened against Manager and/or the District which relates to the consummation of the transactions proposed under the Operating Agreements.

(b) Stand-by Management Services.

- (i) Upon the Effective Date of an Operating Agreement (as defined in the Operating Agreements), Manager's and the District's obligations hereunder shall be treated as suspended ("Suspended") with neither party effectively having any obligation beyond those they would have had if the Agreement had been terminated or expired. When the District and Manager enter into either the Interim Operating Agreement and/or the Long Term Operating Agreement, the parties shall wind-up of their obligations hereunder as if this Agreement had been terminated. Following the Effective Date of an Operating Agreement (as defined in the Operating Agreements), during the remainder of the Operating Period hereunder, the District shall pay Manager an amount equal to One Hundred Dollars (\$100) per year, for each year in which this Agreement is Suspended, on each annual anniversary of the Effective Date under the applicable Operating Agreement, in consideration of Manager's agreement to serve as a stand-by manager for the District for the Operating Period hereunder.
- (ii) As stand-by manager, Manager shall provide the management services described herein upon the terms set forth herein in the event that: (a) the term of the applicable Operating Agreement terminated or declared by a court of competent jurisdiction to be invalid or unenforceable and (b) such termination of the Operating Agreement was not due to: (i) Manager's default under the applicable Operating Agreement; (ii) any event which resulted in the payment of a Termination Fee, as defined in the applicable Operating Agreement; or (iii) the Long Term Operating Agreement becoming effective. Manager shall commence providing the management services under the terms of this Agreement immediately following the termination of the applicable Operating Agreement and shall have all rights hereunder, including the right to renew the Operating Period.
- (iii) If Manager provides stand-by services hereunder, the Management Fee shall be adjusted pursuant to Section 6(b) as if the Agreement had not been Suspended and CPI Adjustments had continued to be made following the Effective Date of the applicable Operating Agreement.

10. Default.

- (a) <u>District Default</u>. The following occurrences shall each be deemed an event of default by the District ("District Default"), unless waived in writing by Manager:
- (i) Material breach of any representation, warranty, or covenant of the District contained within this Agreement, after giving written notice to the District, and the District 's subsequent failure to cure the breach (if such breach is capable of being cured) within sixty (60) days (or ten (10) days in the event of a monetary breach or thirty (30) days in the event of a breach of any provision requiring the District to: (i) provide the Manager with a consent or approval or (ii) execute an agreement or document hereunder); provided, however, that if the cure cannot reasonably be effectuated within the applicable cure period, a longer period shall be allowed not to

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exceed ninety (90) days, if the District has commenced to cure such breach in good faith or has otherwise provided adequate protection or security to protect Manager's interest hereunder (which security shall be sufficient in Manager's sole and absolute discretion) within the applicable cure period, and the District is proceeding with due diligence to effect a cure.

The occurrence of any of the following: (a) the filing by the District of a voluntary petition in bankruptcy or for reorganization under the Bankruptcy Code, or (b) the filing of a petition for the appointment of a receiver for all or any of the property of the District, or (c) the taking of any voluntary or involuntary steps to dissolve or suspend the powers of the District (unless such steps to dissolve or suspend are removed) within thirty (30) days, or (d) the consent by the District to an order for relief under the Bankruptcy Code or the failure to vacate such an order for relief within sixty (60) days from and after the date of entry thereof, or (e) the entry of any order, judgment or decree, by any court of competent jurisdiction, on the application of any creditor of the District or any other Person, adjudicating the District as a bankrupt, or to be insolvent, or approving a petition seeking reorganization or the appointment of a receiver, trustee or liquidator of all or a substantial part of the District's assets, if such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days. In the event that the District becomes a debtor under the Bankruptcy Code, the District agrees, to the extent permitted under applicable Law: (a) not to reject this Agreement; (b) to designate Manager as a vendor supplier that is critical to the District's business and obtain a critical vendor order that (x) waives or releases any preference liability; and (y) provides administrative priority or other preferred status, acceptable to Manager, with respect to Manager's pre-petition claims.

If Manager, at any time and in good faith, shall deem itself insecure and for the purposes of this Agreement, Manager shall be entitled to deem itself insecure when some event occurs, fails to occur or is threatened or some objective condition exists or is threatened which significantly impairs the prospects that any of the obligations of the District hereunder will be paid when due, or which significantly affects the financial or business condition of the District. If Manager deems itself insecure, it shall have no obligation to continue performing hereunder more than thirty (30) days from and after it notifies the District that it has deemed itself insecure, unless the District provides Manager with an unconditional, irrevocable letter of credit (the "Letter of Credit") from a U.S. banking institution acceptable to Manager, insured by a federal insurance agency ("Issuer"). The Letter of Credit shall (i) meet the requirements of the "Uniform Customs and Practice for Documentary Credits," ICC No. 500 (1993 Edition), (ii) name Manager as beneficiary, (iii) be in an amount equal to the lesser of (A) the Termination Fee or (B) such lesser amount as may be specified by Manager, in its sole and absolute discretion, (iv) be payable in full or partial draws against Manager's sight draft, (v) include an "evergreen" provision which provides that the Letter of Credit shall be renewed automatically on an annual basis following its issuance, unless the Issuer delivers thirty (30) days prior written notice of cancellation to Manager, (vi) have an initial expiration date no earlier than one year from the date of issue, and (vii) otherwise be in form and substance satisfactory to Manager. In the event the Letter of Credit is ever not renewed when required hereunder, Manager shall have the right, immediately upon receipt of the notice of cancellation described above, to draw upon the Letter of Credit and hold the proceeds thereof as a cash security deposit. Provided that the District is not then in default of any of its obligations hereunder and no act, omission, fact, circumstance, condition or event that with the giving of notice or the passage of time or both would constitute a default hereunder exists, Manager shall return the Letter of Credit to the District within forty-five (45) days after the expiration or termination of this Agreement. If the Letter of Credit is not timely provided, then Manager shall have the right to immediately terminate this Agreement (with no right on the part of the District to cure same) and receive the Termination Fee.

(b) Liquidated Damages.

- (i) Each of the parties acknowledges that it would be extremely difficult and impracticable, if not impossible, for Manager to ascertain with any degree of certainty the amount of damages that would be suffered by Manager in the event of the occurrence of a the District Default. In the event this Agreement is terminated as a result of any the District Default, or for any other reason other than a termination by Manager under Section 10(d)(i), or a Manager Default, the District shall pay a fee (the "Termination Fee"), which fee is not a penalty, but rather is liquidated damages in accordance with California Civil Code Section 1671, which the parties have negotiated in good faith and have agreed is a reasonable fee under the circumstances. The Termination Fee shall be paid within five (5) days after the effective date of the termination of this Agreement.
- (ii) The Termination Fee shall be an amount equal to Seventy Thousand Dollars (\$70,000) per month first increased by CPI, as provided below, and then multiplied by the remaining number of months in the Term (not to exceed 120 months) at the time of the termination, discounted to its present value using the discount rate of the Federal Reserve Bank of San Francisco at the time of termination plus one percent (1%).
- (1) "CPI" means the monthly index of the U.S. City Average Consumer Price Index for Urban Wage Earners and Clerical Workers Medical Care Services (1982-84 equals 100) published by the United States Department of Labor, Bureau of Labor Statistics or any successor agency that shall issue such index. In the event that the CPI is discontinued for any reason, the parties shall use such other index, or comparable statistics, on the cost of medical care services in the United States, as shall be computed and published by any agency of the United States or, if no such index is published by any agency of the United States, by a responsible financial periodical of recognized authority.
- (2) Inflation Adjustment. The Termination Fee shall be adjusted for inflation by multiplying the above stated Termination Fee by the CPI percentage increase between January 1, 2015 and the date the Termination Fee is payable, using the latest published data since the last adjustment.
- (iii) Notwithstanding the foregoing, nothing herein is intended to permit the Termination Fee to exceed such amount as is permissible under any tax-exempt financing requirements under applicable Law, with respect to the Bonds. In the event the Termination Fee exceeds any permissible limit upon such fees, then the Termination Fee shall be reduced to the maximum termination or similar fee permitted under such Law, however denominated, and the District shall enter into any agreements necessary to minimize any reduction to the Termination Fee.
- (iv) If the District fails to pay the Termination Fee when due, then the Termination Fee, or any unpaid portion thereof, shall bear interest from the date such payment was required to be made until the date of payment at the interest rate set forth in Section 6(e).
- (v) If upon termination of this Agreement, the District contends that the Termination Fee is not due and owing and Manager contends that same is due and owing, the District shall be obliged to deposit, within three (3) days, the amount of the Termination Fee into an Escrow account with a national bank with not less than \$50,000,000,000 in assets. The funds shall be released to the applicable party upon the sooner to occur of: (a) mutual instructions of Manager and the District; (b) final non-appealable order of a court directing the release of the funds

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to a party; or (c) to the District if Manager has not contested, in a judicial proceeding, that the funds are owed to it within twenty four (24) months of the termination.

- (vi) This Section shall survive the expiration or termination of this Agreement.
- (c) <u>Manager Default</u>. The following occurrences shall each be deemed an event of default by Manager ("<u>Manager Default</u>"), unless waived in writing by the District:
- (i) Material breach of any material covenant of Manager contained within this Agreement, after giving written notice to Manager, and Manager's subsequent failure to cure the breach within sixty (60) days; provided, however, that if the cure cannot reasonably be effectuated within such sixty (60) day period, a longer period shall be allowed, if Manager has commenced to cure such breach or has otherwise provided adequate protection or security to protect the District 's interest hereunder, and Manager is proceeding to effect a cure. In determining whether a breach has occurred, the District shall exercise its reasonable discretion in good faith and shall use its best efforts to assist Manager in effectuating a cure.
- (ii) The occurrence of any of the following: (a) the filing by Manager of a voluntary petition in bankruptcy or for reorganization under the Bankruptcy Code, or (b) the filing of a petition for the appointment of a receiver for all or any substantial portion of the property of Manager, or (c) the taking of any voluntary or involuntary steps to dissolve or suspend the powers of Manager (unless such steps to dissolve or suspend are removed) within sixty (60) days, or (d) the consent by Manager to an order for relief under the Bankruptcy Code or the failure to vacate such an order for relief within sixty (60) days from and after the date of entry thereof, or (e) the entry of any order, judgment or decree, by any court of competent jurisdiction, on the application of any creditor of Manager or any other Person, adjudicating Manager as a bankrupt, or to be insolvent, or approving a petition seeking reorganization or the appointment of a receiver, trustee or liquidator of all or a substantial part of Manager's assets, if such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days.

(d) Early Termination Events.

- (i) Notwithstanding anything herein to the contrary, during the initial thirty-six (36) months of the Operating Period, Manager shall have the option to terminate this Agreement before its expiration, upon at least six (6) months' written notice to the District.
- (ii) In the event either party should be determined by a Governmental Authority to be in violation of any Law, by virtue of this arrangement or this arrangement is otherwise deemed illegal by a Court of competent jurisdiction in a final non-appealable determination ("Jeopardy Events"), the parties shall use best efforts to negotiate an amendment to this Agreement to remove or negate the Jeopardy Event. If they are unable to do so within six (6) months, either party may terminate this Agreement by written notice to the other, provided that upon such termination the District shall be obliged to pay the Termination Fee as provided in Section 10(b). Until any such written notice of termination is received, Manager may elect to exercise its rights under Section 9, without regard to whether the preconditions regarding the Bond indebtedness has been satisfied.

(e) Procedure.

- (i) In the event either party to this Agreement deems the other party to be in default of its obligations hereunder, then said party shall be required to provide notice of the alleged default to the other party, which notice shall contain a detailed description of the alleged default.
- (ii) If the claim of default is disputed by the party receiving such notice, within ten (10) business days thereafter the party receiving the notice shall give notice to the charging party that the party receiving such notice disputes that the factual matters alleged constitute a default under this Agreement. If the parties cannot resolve such dispute within ten (10) business days thereafter (commencing on the date that the charging party receives notice of the dispute) the parties shall submit such matter to binding arbitration in Los Angeles County, California, in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules and Procedure for Arbitration, and applying the Law of the State. Any determination by the arbitrator shall be final and binding upon the parties, and judgment thereon may be entered in any court having jurisdiction thereof. The costs of arbitration shall be borne equally by the parties. During the pendency of any such arbitration and until final judgment thereon has been entered, this Agreement shall not be terminated as a result of the alleged default which is in dispute.

(f) <u>Termination</u>.

- (i) In the event of a party's failure to cure a default within the time allowed herein for curing such default, the non-defaulting party may immediately terminate this Agreement by notice to the defaulting party and none of the parties shall have any further obligations under this Agreement, except those obligations that by their terms or nature extend beyond the date of expiration or termination, provided, that the non-defaulting party shall have all rights and remedies available hereunder and at Law as a result of the default. It is understood that in the event of any monetary default by the District which is not cured within the specified ten (10) day period (including the failure to deposit sufficient funds to enable Manager to pay the Hospital and the Clinics and Other Facilities' expenses) Manager may immediately terminate this Agreement by written notice to the District and may cease rendering any services hereunder to the District, all without any further liability to the District (without regard to whether Manager has advanced any funds pursuant to Section 4(i)(i)(1).
- (ii) The parties may mutually agree at any time to terminate this Agreement.
 - (iii) This Agreement shall automatically terminate if:
- (1) An Operating Agreement, after its Effective Date, has been terminated and the Manager is not obliged to provide the stand-by management services described in Section 9(b);
 - (2) The Operating Period hereunder has expired; or
- (3) A substantial portion of the Hospital and the Clinics and Other Facilities are destroyed or subject to condemnation such that the Operations are, in the sole and absolute discretion of Manager, materially impaired.

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(iv) In the event of termination of this Agreement, Manager shall remove itself as a signatory on the District's accounts and turn over to the District within ten (10) business days following the expiration or termination of this Agreement all business records of the District pertaining to the District. All medical records shall be maintained by the District and shall remain the property of the District.

11. Miscellaneous.

- (a) <u>Complete Agreement</u>. This Agreement constitutes the entire agreement between the parties with respect to the management of the Hospital and the Clinics and Other Facilities, and supersedes any and all prior agreements, either oral or written, between the parties with respect thereto, including the Management Services Agreement described in the first paragraph of this Agreement.
- (b) <u>Recordation.</u> At the request of either party and at the expense of the requesting party, the parties shall execute a short form memorandum of this Agreement which identifies this Agreement, the parties, the Operating Period, the legal description of the real property upon which the Hospital and the Clinics and Other Facilities are located, and such other matters as the parties may agree. Such memorandum shall be recorded in the Office of the County Recorder of Tulare County, California, at the expense of the requesting party.
- (c) <u>Binding Agreement</u>. This Agreement and the rights and obligations of the parties hereunder are binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as provided in this Section, neither party shall have the right to assign its rights or delegate its duties hereunder unless it first obtains the written consent of the other party hereto. Manager may, in its sole and absolute discretion, assign this Agreement, without the District's consent, to any Affiliate of Manager, or to any other Person which is owned and controlled by Manager or the Controlling Persons of Manager, or in connection with a Manager consolidation or sale by Manager to any Person of all or substantially all of Manager's assets or ownership interests. Nothing herein prevents Manager from subcontracting with third parties to perform any of the services required of Manager hereunder. Any assignment in violation of this Section shall be null and void.
- (d) Governing Law. This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed, and governed by and in accordance with, the Law of the State. The parties agree that the exclusive jurisdiction and venue of all actions claims, or other legal proceedings arising in any manner pursuant to this Agreement, shall be vested in the Superior Court of the County of Los Angeles in the State and in no other. Notwithstanding any other provisions contained in any other document executed simultaneously herewith, each party, for itself, and all successor, assigns, heirs, executors, or future parties at interest agree and accept the jurisdiction of these courts and waive any defense of personal jurisdiction, forum non conveniens, venue or similar defenses and irrevocably agree to be bound by any judgment rendered in the aforementioned Court; exclusive of any and all other Federal or State courts.
- (e) <u>Headings</u>. The section and subsection headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the Agreement.
- (f) <u>Notices</u>. Except as otherwise expressly permitted herein, all notices required or permitted to be given hereunder shall be in writing (whether or not written notice is specified herein) and shall be personally delivered, or mailed by United States mail, postage

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prepaid, registered or certified, return receipt requested, or sent by a nationally recognized overnight delivery service, or sent by electronic transmission system. Unless such information is changed by written notice given by the affected party, any such notices shall be sent to the following addresses:

If to Manager:

HealthCare Conglomerate Associates Attention: Benny Benzeevi, M.D. 810 North Cherry Street Tulare, CA 93274

Email: Benny@Healthcca.com

With a copy to:
Bruce R. Greene, Esq.
Baker Hostetler LLP
11601 Wilshire Blvd., Suite 1400
Los Angeles, CA 90025
Email: brgreene@bakerlaw.com

If to the District:

Tulare Regional Medical Center Attention: Chair of the Board 869 North Cherry Street Tulare, CA 93274

Email: sbell@tulareregional.org

With a copy to:
Dooley, Herr, Pedersen & Berglund Bailey
Attention: Kris Pedersen
100 Willow Plaza, Suite 300
Visalia, CA 93291
Email: kpedersen@dhlaw.net

All notices sent by personal delivery shall be effective and deemed served upon receipt thereof. All notices sent by mail shall be effective and deemed served three (3) calendar days after being deposited in the United States mail. All notices sent by overnight delivery service shall be effective and deemed served when delivered by such overnight delivery service. All notices sent by electronic transmission system shall be effective and deemed served on the day of transmission, if on a business day and during business hours (9am until 5pm, PT) or otherwise on the next business day thereafter.

(g) <u>Survival of Representations</u>. All of the representations, and warranties, and those covenants and agreements contained in this Agreement which are stated to survive termination or expiration of this Agreement, shall survive the expiration or the termination, for any reason, of this Agreement. No performance or execution of this Agreement, in whole or in part, by any party hereto, no course of dealing between the parties hereto or any delay or failure on the party of any party in exercising any rights hereunder or at Law or in equity, and no investigation by any party hereto, shall operate as a waiver of rights of such party, except to the extent expressly waived in writing by such party.

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(h) <u>Counterparts.</u> This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Signatures transmitted by facsimile or e-mail or other digital means shall be accepted as original signatures.

(i) Severability.

- (i) Each and every provision of this Agreement is severable, and the invalidity of one or more of such provisions shall not, in any way, affect the validity of this Agreement or any other provisions hereof. If any clause or provision of this Agreement is illegal, invalid or unenforceable, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.
- The parties hereby have made all reasonable efforts to ensure this Agreement represents and memorializes the complete and final agreement between the parties hereto, and that it complies with all applicable Law. In the event there is a change in Law, or the interpretations thereof, whether by statute, regulation, agency or judicial decision, or otherwise, that has any material effect on any term of this Agreement, or in the event that a party's reputable counsel (being legal counsel with at least ten (10) years' experience in Hospital Law) determines that any term of this Agreement poses a material risk of violating any Law, then the applicable term(s) of this Agreement shall be subject to renegotiation and either party may request renegotiation of the affected term or terms of this Agreement, upon written notice to the other party, to remedy such condition. In the interim, the parties shall perform their obligations hereunder in full compliance with applicable Law. The parties expressly recognize that upon request for renegotiation, each party has a duty and obligation to the other only to renegotiate the affected term(s) in good faith and, further, the parties expressly agree that their consent to proposals submitted by the other party during renegotiation efforts shall not be unreasonably withheld or delayed. The parties further expressly recognize that in any such renegotiation, the relative economics to each of the parties shall be preserved. Should the parties be unable to renegotiate the term or terms so affected so as to bring it/them into compliance with Law or the interpretation thereof within sixty (60) days of the date on which written notice of a desired renegotiation is given, then either party shall be entitled, after the expiration of said sixty (60) day period, to terminate this Agreement upon sixty (60) days' written notice to the other party, provided that such party has received an opinion of reputable legal counsel, which legal counsel and opinion are reasonably acceptable to the other party, that it is more likely than not that this Agreement violates applicable Law. If this Agreement is terminated pursuant to Section 11(i)(ii), Manager shall be entitled to receive payment of the Termination Fee.
- <u>S(j)</u> <u>Cumulative Rights and Remedies.</u> Any right, power or remedy provided under this Agreement or any party hereto shall be cumulative and in addition to any other right, power or remedy provided under this Agreement or existing in Law or in equity, including, without limitation, the remedies of injunctive relief and specific performance.

(k) Modification and Waiver.

(i) This Agreement may only be amended by a writing signed by both parties.

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- (ii) No failure by any party to insist upon strict compliance with any term of this Agreement, to exercise any option, enforce any right, or seek any remedy upon any default of any other party shall affect, or constitute a waiver of, the first party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default; nor shall any custom or practice of the parties at variance with any provision of this Agreement affect or constitute a waiver of, any party's right to demand strict compliance with all provisions of this Agreement.
- (I) Attorneys' Fees. If any action at law or in equity (or any arbitration proceeding required hereunder) is brought to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief, as determined by the applicable court or arbitrator. The foregoing includes reasonable attorney's fees in connection with any bankruptcy proceeding (including relief from stay litigation), and in connection with any appeals.
- (m) Independent Contractor Status. Notwithstanding any provision contained herein to the contrary, Manager and the District each understand and agree that the parties hereto intend to act and perform as independent contractors. Therefore, the District is not an employee or partner of Manager. Nothing in this Agreement shall be construed as placing the District in a relationship of employer-employee or partners with Manager. The parties shall not have the right to make any promises, warranties or representations, or to assume or create any obligations, on behalf of the other party except as otherwise expressly provided herein or as otherwise agreed. The District and Manager agree to be solely and entirely responsible for their respective acts and for the acts of any of their respective employees and agents, except as otherwise expressly provided herein.
- (n) Ambiguities and Uncertainties. This Agreement and any ambiguities or uncertainties herein, or the documents referenced herein, shall be equally and fairly interpreted and construed without reference to the identity of the party or parties preparing this Agreement or any of the documents referred to herein, on the express understanding and agreement that the parties participated equally in the negotiation of the Agreement and the documents referred to herein, or have had equal opportunity to do so. Accordingly, the parties hereby waive the benefit of California Civil Code Section 1654 and any successor or amended statute providing that in cases of uncertainty, language or a contract should be interpreted most strongly against the party who caused the uncertainty to exist.
- (o) <u>Consents, Approvals and Discretion</u>. Except as herein expressly provided to the contrary, whenever this Agreement requires any consent or approval to be given by any party or any party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld, conditioned or delayed and such discretion shall be reasonably exercised, except as otherwise provided herein. If no response to a consent or request from Manager to the District for approval is provided to Manager within ten (10) days from the receipt by the District of the request, then the consent or approval of the District shall be deemed to have been given.
- (p) <u>Expiration of Time Periods</u>. In the event that any date specified herein is, or that any period specified herein expires on, a Salurday, a Sunday, or a State or federal holiday, then such date or the expiration date of such period, as the case may be, will be extended to the next succeeding business day. A business day is a day on which banks are required to be open for business in Los Angeles, California. All references in this Agreement to "days" are to calendar days, unless business days are so indicated.

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- (q) <u>Force Majeure</u>. Except with respect to payment obligations, neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service deemed resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions beyond the reasonable control of either party. However, both parties shall make good faith efforts to perform under this Agreement in the event of any such circumstances.
- (r) <u>No Third-Party Beneficiaries</u>. The rights, privileges, benefits, and obligations arising under or created by this Agreement are intended to apply to and shall only apply to the parties and to no other Persons, except as otherwise set forth herein.
- (s) <u>Consequential Damages</u>. Except as expressly provided herein to the contrary, neither party shall be liable under this Agreement for consequential damages, incidental damages, indirect damages, or special damages or for loss of profit, loss of business opportunity or loss of income. Notwithstanding anything to the contrary contained in this Agreement, the parties hereto acknowledge and agree that the terms and provisions of this <u>Section 11(s)</u> shall not limit, alter, modify, impair, or otherwise affect any of the remedies of Manager set forth in this Agreement, including the right to be paid the Termination Fee.
- (t) <u>Limitation of Liability</u>. Notwithstanding any provision in this Agreement to the contrary, under no circumstances shall Manager or any Manager Party have any personal liability for any failure to perform any obligations arising out of or in connection with this Agreement or for any breach of the terms or conditions of this Agreement (whether written or implied). No personal judgment shall lie against Manager or any Manager Party and any judgments so rendered shall not give rise to any right of execution or levy against any of their assets. Any judgments rendered against Manager shall be satisfied solely out of the assets of Manager. The foregoing provisions are not intended to relieve Manager from the performance of any of Manager's obligations under this Agreement, but only to limit the personal liability of Manager and Manager Parties in case of recovery of a judgment against any of them.
- (u) Additional Assurances. The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, at the request of a party, the other party or parties shall execute such additional instruments and take such additional actions as the requesting party may deem necessary to effectuate this Agreement.
- (v) <u>Expenses</u>. District shall bear any costs and expenses incurred by it in connection with the negotiation of the transactions contemplated herein and shall reimburse Manager for its actual out-of-pocket expenses incurred in connection with formulating, identifying, and developing transaction structures and strategies, financial and operational due diligence, preparation of definitive transaction agreements and ancillary documents, oversight of the legal process, and coordination and oversight of transaction implementation strategy related to the transactions contemplated herein, provided that such amount shall not exceed One Hundred Eighty Thousand Dollars (\$180,000). Manager shall bear any other costs and expenses incurred by it in connection with the negotiation of the transactions contemplated herein.

[Signatures on next page]

EXHIBIT A

LIST OF FACILITIES

Evolutions Fitness & Wellness 1425 E. Prosperity Avenue Tulare CA

Family X-Ray Center 880 E. Merritt Ave Tulare, CA 93274

Hillman Healthcare Center - 1062 South K Street Tulare, CA. 93274

Kingsburg Healthcare Center - 1200 Smith Street Kingsburg, CA. 93631

Lindsay Healthcare Center - 845 N Sequoia Ave Lindsay, CA. 93247

West Street Healthcare Center - 325 N West Street Tulare, CA. 93274

Woodville Healthcare Center - 16796 Ave 168 Woodville, CA. 93257

Allied Services Center
Tulare Regional Medical Center Clinical Laboratory
Allied Services Building
869 N. Cherry
Tulare, CA 93274

Tulare Regional Laboratory - Alternate Collection Site 799 Cherry Street Tulare, CA 93274

Mineral King Toxicology Laboratory 880 E. Merritt, Suite 107 Tulare, CA 93274

Retail Pharmacy
Fulare District Hospital Pharmacy
869 N Cherry St
Tulare, CA 93274

Together with such other facilities and clinics as are owned, leased or otherwise operated by District that Manager elects to operate hereunder, by notice to District from time to time.

Exhibit A

603545537 7

EXHIBIT B

INTERIM JOINT OPERATING AGREEMENT

[Attached]

Exhibit B

603545537.7

Interim Joint Operating Agreement

between

HealthCare Conglomerate Associates, LLC

and

Tulare Regional Medical Center

MAY 29, 2014

INTERIM JOINT OPERATING AGREEMENT

This INTERIM JOINT OPERATING AGREEMENT ("Agreement") is made and entered into on MAY 2014 to be effective upon the termination of the MSA, as defined below, ("Effective Date"), by and between HealthCare Conglomerate Associates, LLC, a California limited liability company ("HCCA"), and Tulare Local Healthcare District, d/b/a Tulare Regional Medical Center ("District").

RECITALS:

WHEREAS, the District is the owner of the real property identified on <u>Exhibit A</u> hereto together with the Buildings thereon, and certain equipment, supplies and fixtures associated therewith on which it operates an acute care hospital facility, known as Tulare Regional Medical Center, located in Tulare, California (the "<u>Hospital</u>");

WHEREAS, the District is the owner or tenant of certain other real property, including, without limitation, the Buildings thereon, and the Clinics and Other Facilities, together with certain equipment, supplies and fixtures associated therewith;

WHEREAS, the parties, have previously entered into that certain Management Services Agreement, of even date herewith (the "MSA") which sets forth the terms and conditions pursuant to which HCCA provides certain management services to the District, and which contemplates the execution of this Agreement.

WHEREAS, the District has determined that it is in the best interests of the residents of the District that the operation of the Hospital and the Clinics and Other Facilities be delegated to HCCA, and that such delegation will best serve the interest of the District;

WHEREAS, HCCA and the District wish to enter into this Agreement for the purpose of forming an interim joint venture for the operation of the Hospital and the Clinics and Other Facilities in order to assure consistent high quality health care services are provided efficiently and to reduce the District's financial risk in providing those services;

WHEREAS, the District believes that this Agreement is necessary for the provision of adequate health services to the communities served by the District and that this arrangement constitutes a new method of providing adequate health care to the communities served by the District, as contemplated by <u>California Health and Safety Code</u> § 32126.5.

WHEREAS, the parties acknowledge that in today's healthcare environment, HCCA will need the flexibility to respond appropriately in conducting the Operations;

WHEREAS, the District shall act as an advocate for the community in its relations with HCCA; and $\hat{\beta}$

WHEREAS, under the Laws of the State, including, without limitation, <u>California Health and Safety Code</u> § 32121(o) and § 32126.5, the District and HCCA each is authorized to enter into and perform this joint venture arrangement and each has been duly authorized to do so by resolutions adopted by the Governing Body and by the manager of HCCA.

NOW, THEREFORE, for and in consideration of the premises and the mutual undertakings and representations herein contained and for other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the parties hereto, intending to become legally bound, hereby agree as follows:

AGREEMENT

1. Definitions.

All capitalized terms not defined elsewhere in this Agreement shall have the following meanings, unless a different meaning clearly appears from the context:

- (a) "Affiliate" means any other firm, partnership, association, corporation, joint venture or public body, directly or indirectly controlling or controlled by, or under direct or indirect common control with, the District or HCCA. The term "control," when used with respect to a particular Person, means the possession, directly or indirectly, of the power to direct or cause the direction of management in the policies of such Person whether through the ownership of voting stock, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.
 - (b) "Annual Budget" shall have the meaning set forth in Section 4(i)(i).
- (c) "<u>Assumed Contracts</u>" means those contracts which HCCA elects or has previously elected, in its sole and absolute discretion, to assume, pursuant to the provisions of Section 3(a)(x).
- (d) "Bonds" means the \$15,700,000 Refunding Revenue Bonds, series 2007, the \$8,595,000 General Obligation Bonds (2005 Election), Series B-1, 2009 and the \$61,405,000 General Obligation Bonds (2005 Election), Series B-2, 2009 or any other bonds hereafter issued by the District with the consent of HCCA.
- (e) "Buildings" means those buildings and other structures in which the Operations now or hereafter are conducted, together with such other buildings and structures now or hereafter owned, leased or otherwise operated by the District that HCCA elects, in its sole and absolute discretion, to operate hereunder, by notice to the District from time to time.
 - (f) "CIA" shall have the meaning set forth in Section 18(a).
 - (g) "Claims" shall have the meaning set forth in Section 2(f)(x)(iv).
- (h) "Clinics and Other Facilities" means those facilities and businesses identified on Exhibit B to this Agreement, together with such other facilities and clinics owned, leased or otherwise operated by District that HCCA elects, in its sole and absolute discretion, to operate hereunder, by notice to District from time to time.
 - (i) "Compliance Plan" shall have the meaning set forth in Section 18(a).
 - (j) "Consultants" shall have the meaning set forth in Section 4(i).
- (k) "Contracts" means all service, supply, maintenance, and utility agreements, all leases, and all other contracts, agreements, arrangements, and obligations relating to the Operations, whether oral or written, all of which are described in Exhibit C to this Agreement. True, correct, and complete copies of all of the written Contracts (including all

amendments thereto), in existence on the Effective Date, will be delivered to HCCA and detailed descriptions of all of the oral Contracts, in existence on the Effective Date, will also be delivered to HCCA.

- (I) "CPI" shall have the meaning set forth in Section 6(e)(ji)(1).
- (m) "CPI Increase" shall have the meaning set forth in Section 6(e)(ii)(1).
- (n) "District Default" shall have the meaning set forth in Section 6(d).
- (o) "<u>District Service Area</u>" means the geographic boundaries of the District established under applicable Law, as currently in effect and as hereafter amended.
 - (p) "Emergent Expenses" shall have the meaning set forth in Section 4(i)(ii).
- (q) "GAAP" means United States generally accepted accounting principles and practices as in effect from time-to-time, as applied by HCCA.
 - (r) "Governing Body" means the Board of Directors of the District.
- (s) "Governmental Authority" means any federal, State or local judicial, executive or legislative body or governmental municipality, department, commission board, agency or authority including government contractors for federal health programs, and including without limitation, the State of California Health and Human Services Agency Office of Statewide Health Planning and Development.
 - (t) "HCCA Default" shall have the meaning set forth in Section 6(f).
- (u) "HCCA Parties" means HCCA and its Affiliates, and their respective officers, directors, managers, employees, agents, contractors and representatives.
- (v) "HCCA Property" means any machinery, inventory, equipment, fixtures, hardware and software, or other personal property (tangible and intangible) associated with Operations that HCCA has constructed, installed or otherwise acquired, at its expense.
- (w) "<u>Hospital</u>" shall have the meaning set forth in the Recitals of this Agreement.
 - (x) "Hospital Law" means California Health and Safety Code §32000 et seq.
 - (y) "Ineligible Person" shall have the meaning set forth in Section 18(d).
 - (z) "Jeopardy Events" shall have the meaning set forth in Section 6(g)(ii).
- (aa) "Law" means any constitutional provision, statute, ordinance, or other law, rule, regulation, interpretation, judgment, decree or order of any Governmental Authority or any settlement agreement or compliance agreement with any Governmental Authority, including Hospital Law.
 - (bb) "Major Decisions" has the meaning set forth in Section 2(d).
 - (cc) "Medical Staff" shall have the meaning set forth in Section 4(d)(i).

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- (dd) "OIG" shall mean the Office of Inspector General of the Department of Health and Human Services.
- (ee) "Operating Expenses" means all costs and expenses paid or incurred in connection with the Operations, determined in accordance with sound accounting and management practices, including without limitation, utilities, insurance, taxes, supplies, cost of Permits, salaries and other compensation due to employees or payable to third party consultants (including legal and accounting expenses) contractors, maintenance and repair of the Hospital or the Clinics and Other Facilities, including janitorial, security, elevator, painting, plumbing, electrical, carpentry, window washing, signage, landscaping, parking lot maintenance and waste disposal, including disposal of bio hazardous medical waste generated in Operations in accordance with applicable Law.
- (ff) "Operations" means the healthcare and other operations and programs which are conducted at the Hospital and the Clinics and Other Facilities, as the same may be modified by HCCA from time to time during the Term.
- (gg) "Permits" means all permits, licenses, registrations, orders, consents, certificates, accreditations, authorizations, waivers and approvals of any Governmental Authority.
- (hh) "Person" means an association, a corporation, a limited liability company, an individual, a partnership (general or limited), a trust, a hospital district organized under the Hospital Law, or any other entity or organization, including a Governmental Authority.
 - (ii) "Preexisting Claims" shall have the meaning set forth in Section 2(f)(x)(r).
 - (jj) "Project" shall have the meaning set forth in Section 2(f)(i).
 - (kk) "State" means the State of California.
- (II) "Substantial Part of the Hospital or the Clinics and Other Facilities" means the portion of such facilities, as HCCA, in its sole and absolute discretion, shall determine which would prevent or materially interfere with the use of any of the Hospital or the Clinics and Other Facilities for the purposes set forth herein.
 - (mm) "Term" has the meaning set forth in Section 6.
 - (nn) "<u>Termination Fee</u>" shall have the meaning set forth in <u>Section 6(e)(i)</u>.

2. General Responsibilities of the Parties.

(a) Appointment. The District hereby appoints HCCA and HCCA hereby accepts such appointment from the District, subject at all times to the terms and provisions herein, as the sole and exclusive agent to operate the Hospital and the Clinics and Other Facilities and to provide the day-to-day and strategic management of the foregoing. HCCA shall have the general responsibility and authority to implement all aspects of the Operations in accordance with HCCA's policies and procedures, in such manner as HCCA shall determine in its sole and absolute discretion, subject to Section 2(d). The parties intend that HCCA will operate and retain full control over the Hospital and the Clinics and Other Facilities and shall make all decisions and is hereby authorized to take any action of any kind and to do anything

and everything it deems necessary, in its sole and absolute discretion, in connection with the Operations, except as provided in <u>Subsection 2(d)(i)(3)</u>. Nothing in this Agreement shall be construed to create any fiduciary duty owed by either party to the other party or any of their respective Affiliates.

- (b) Ownership of Assets. The District will continue to retain ownership of the real and personal property (including the intangible property) of the Hospital and the Clinics and Other Facilities but subject to HCCA's right and authority to make use of such property for the purposes of this Agreement, as set forth in Section 3(a). This Agreement is not intended to: (i) be a lease, does not create any landlord/tenant relationship between the District and HCCA, and is not intended to convey or constitute an estate or interest in the real property of District or (ii) result in the transfer of the District's facilities from District ownership, as prohibited under California Health and Safety Code §32121(r). It is intended that this Agreement shall constitute a license.
- (c) Representations of the District. The District represents to HCCA as follows:
- (i) The execution and delivery of this Agreement by the District and the consummation by the District of the transactions contemplated hereby do not nor will they, after the giving of notice, or the lapse of time, or otherwise (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or authority actually known to the District, or (ii) conflict with, result in a breach of, or constitute a default under any Bond, note or other evidence of indebtedness, any mortgage, or other material Contract or instrument to which the District is a party or by which the District is bound.
- (ii) Except for applicable consents described herein, no approval, consent or authorization of, filing or registration with or giving of notice to, any Governmental Authority or any other Person, including any Bond trustee, is required for the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby.

(d) Certain Rights and Obligations of the District.

- (i) During the term hereof, the District shall do or cause all things to be done reasonably necessary to preserve, renew and keep in full force and effect its legal existence under the Law of the State. In addition, the District shall participate in the following matters ("Major Decisions"):
- (1) Changes to the charity care policy of the Hospital that would result in a material change to the overall number of eligible participants in the charity care programs;
- (2) Changes in clinical or operational policies and procedures for District programs which would significantly and materially limit the scope of services provided at the Hospital;
- (3) In addition, while the District and HCCA believe that, as a result of the delegation of management duties hereunder, the Governing Body is not required to: (i) make and enforce all rules, regulations and bylaws necessary for the administration, government, protection and maintenance of the Hospital and the Clinics and Other Facilities and

the property belonging thereto or (ii) prescribe the terms upon which patients may be admitted thereto, as referenced in California Health and Safety Code § 32125(a). Notwithstanding the foregoing, in the event that it is determined that the Governing Body must continue to directly fulfill the duties set forth under California Health and Safety Code § 32125(a), then the Governing Body shall have the right, in consultation with HCCA, to: (i) make and enforce all rules, regulations and bylaws necessary for the administration, government, protection and maintenance of health care facilities under their management and all property belonging thereto; (ii) prescribe the terms upon which patients may be admitted to the Hospital; and (iii) establish and maintain minimum standards of operation, as prescribed under Division 23, Chapter 2, Article 2 of the California Health and Safety Code. In the event that the parties disagree as to the applicability of California Health and Safety Code § 32125(a), the District shall be required to bring a declaratory judgment action in a court in the venue set forth in Section 23(f) to determine the applicability of California Health and Safety Code § 32125(a) and the scope of the required management rights to be vested in the District hereunder; and

In connection with the participation by the District in Major Decisions, the parties shall use their good faith efforts to resolve any disagreements by consensus. HCCA shall give consideration to the views, positions and recommendations of the District. However, final decisions shall be made by HCCA, in its sole and absolute discretion, except as provided in <u>Subsection 2(d)(i)(3)</u>. For the avoidance of doubt, the decision-making authority of the District with respect to the virtual joint venture formed hereunder is intended to be limited and advisory in nature, except as provided in <u>Subsection 2(d)(i)(3)</u>. Except as otherwise expressly required by applicable Law (including as provided in <u>Subsection 2(d)(i)(3)</u>), the District shall not have any rights to vote or decide any matters related to the Operations or otherwise; and

- (4) Matters pertaining to the Project (as defined herein) as described more fully in <u>Section 2(f)</u>.
- (e) <u>Liaisons.</u> Each party shall appoint one senior executive who possesses a general understanding of the issues related to the joint venture collaboration contemplated by this Agreement to act as its respective liaison for this relationship. The liaisons as of the date hereof shall be:

District: Chairman

HCCA: It's Manager

A party may replace its respective liaison at any time upon notice to the other party. Any liaison may designate a substitute to temporarily perform the functions of that liaison. Each liaison shall be charged with creating and maintaining a collaborative relationship. Each liaison will also be responsible for:

- (i) coordinating the relevant functional representatives of the parties, in developing and executing strategies and plans hereunder;
- (ii) providing a single point of communication both internally within the respective party's organizations and together regarding key strategy and plan issues; and
- (iii) identifying and raising cross-party and/or cross-function disputes to the party's respective senior leadership team in a timely manner.

Upon the reasonable request of either party's liaison, and with reasonable notice, each party's liaison, as well as appropriate additional personnel involved in the performance of this Agreement, shall meet at a location mutually agreed to by the parties to discuss issues related to this Agreement.

(f) Construction Project Advice.

- (i) HCCA shall provide the District with advice and recommendations regarding the current Hospital construction project (involving the construction of a new tower commonly referred to as the Tower No. 1 Expansion Project (the "Project")) and will assist the District in its coordination of the Project. HCCA shall not be a contractor on the Project and shall not have control over, charge of or responsibility for, the means, methods techniques, sequences, procedures, or for the safety precautions and programs related to such Project. HCCA shall not have control over or be responsible for the District's architects or contractors or their agents, nor shall HCCA be deemed to be responsible for the construction of the Project, directly or indirectly or the funding of such Project.
- (ii) HCCA shall provide consultation and advice, and shall assist the District in the District's efforts to discharge all of the field operations requirements and responsibilities of the District as the owner of the Project as required under the construction contracts between the District and its contractors (the "Contract Documents") and to cause the District's contractors to perform the work required to construct the Project in accordance with the Contract Documents. In this regard, HCCA shall provide recommendations to the District to assist in its evaluation of the status of the on-going construction associated with the Project; HCCA shall provide on-site administration of the Contract Documents in cooperation with the Project architect. HCCA shall provide assistance, including administrative, management and related services, to coordinate scheduled activities and responsibilities of the contractors, and HCCA shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Project work.
- (iii) HCCA shall endeavor to obtain satisfactory performance from the District's contractors, but shall have no liability for any failure of performance by any of such contractors. HCCA shall have no liability for any design defect or other matter which is the responsibility of the Project architect. HCCA shall recommend courses of action to the District when requirements of the Contract Documents are not being fulfilled. HCCA shall report to the District any defects or deficiencies in the work of any contractor or their agents or employees, or any other Person performing construction on or providing materials or equipment to the Project of which HCCA obtains actual knowledge. Notwithstanding the foregoing, HCCA shall have no obligation to investigate or take active steps to determine the existence of any such defects or deficiencies, nor shall HCCA be liable, for any failure to timely communicate any such defect or deficiency to the District. HCCA may recommend the rejection of any deficient or defective work to the District, if such work does not conform to the Contract Documents; however, the failure of HCCA to recommend rejection of any such work shall not constitute HCCA's approval or acceptance of the work.
- (iv) HCCA shall review requests for changes in the construction contracts, assist in negotiating contractors' proposals, and provide recommendations to the Project architect and the District in connection therewith.
- (v) HCCA shall monitor and evaluate actual costs for the construction work, and estimates for uncompleted work, and shall advise the District as to variances between

actual and budgeted or estimated costs. HCCA shall notify the District if there are any apparent inconsistencies or inaccuracies in the information presented by the District's contractors. HCCA shall also report the contractors' cost control information to the District.

- (vi) HCCA shall assist the District in developing and implementing procedures for the review and processing of applications for payment from the contractors for progress and final payments.
- (vii) HCCA shall record the progress of the Project. On a monthly basis or otherwise as requested by the District, HCCA shall submit written or oral progress reports to the District and attend monthly Governing Body meetings requested by the District.
- (viii) HCCA shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work of any contractors.
- (ix) Project Consultants. HCCA shall make recommendations if it determines that consultants are reasonably required for the Project, and shall assist the District in selecting and engaging such Consultants. HCCA shall supervise and coordinate Project Consultants.

(x) Limitations.

- (1) HCCA has no authority to execute any Contract Documents or otherwise bind the District to any transactions with respect to the Project. HCCA shall not provide any legal services or architectural services with respect to the Project. The District agrees that although HCCA will make recommendations, HCCA shall not take any action in connection with the implementation of such recommendations without the District's prior approval.
- (2) The District will at all times maintain a meaningful and substantial involvement in all phases of the Project, and hereby accepts responsibility for the results of the Project. HCCA's recommendations concerning the terms of the Construction Contracts shall be subject to review and approval of the District and the District's attorneys or other advisers.
- (3) The District acknowledges that HCCA does not guarantee any particular results, notwithstanding projections which may be made by HCCA. HCCA's projections and forward looking statements are based on estimates and expectations, and reasonably available data from contractors, architects and others, and as a result are inherently uncertain. Actual results could differ materially from those anticipated as a result of a variety of factors.
- (4) Neither HCCA nor HCCA Parties shall be liable to the District for any claims, demands, costs, expenses, liabilities or obligations of any nature relating to the Project, ("Claims"), except to the extent resulting from the willful misconduct of HCCA or HCCA Parties. HCCA and HCCA Parties may be liable to the District for general and direct damages, but in no event shall HCCA or any HCCA Parties be liable to the District for any consequential damages, including loss of use, special, indirect or incidental damages. HCCA and HCCA Parties may be liable for punitive or exemplary damages to the extent resulting from their willful misconduct.

- (5) The District shall defend, indemnify and hold HCCA and HCCA Parties free and harmless from and against all Claims (including reasonable attorney's fees), except to the extent resulting from the willful misconduct of HCCA or HCCA Parties. It is understood and agreed that, HCCA and HCCA Parties shall have no liability whatsoever for any actions or failure to act which arose prior to the Effective Date, including Claims which relate in any way to construction activities which occurred prior to that date ("Pre-existing Claims"). In the event that any Claims are made against HCCA or any HCCA Party which may include Pre-existing Claims, then the indemnification and defense obligations of the District shall apply, even if they also involve Claims which are not Pre-existing Claims. However, in the event of a determination by a court or arbitrator that any Claims for which indemnification was provided by the District were not in fact Pre-Existing Claims and were not Claims for which indemnification is otherwise required hereunder, then HCCA shall be liable to reimburse the District for any reasonable costs or expenses incurred by the District in connection with the defense or indemnification.
- (6) In circumstances where any limitation on damages or indemnification provision hereunder is unenforceable or unavailable for any reason, the District shall contribute to any Claims, relating to the Services provided hereunder by HCCA, in such proportion proportional to the relative fault of the parties bears to all other conduct giving rise to such Claim.
- (7) Neither HCCA nor any HCCA Parties, or any of their respective Affiliates, shall have any liability hereunder to the District, and the District agrees it will not bring any action against any such Persons, except to the extent caused by the willful misconduct of such Persons. Without limiting the foregoing, such Affiliates are intended third-party beneficiaries of these terms and may in their own right enforce such terms.
- (8) The provisions of Section 2(f)(x)(4)-(7) shall survive the expiration or termination of this Agreement.
- (g) <u>Funds</u>. If HCCA shall determine that sufficient funds are not available from the Operations and amounts deposited with HCCA as provided in <u>Section 2(h)</u>, the District shall furnish HCCA with timely and sufficient funds to timely pay the Operating Expenses, both operating and non-operating expenses. HCCA will notify the District by submitting a fund request to the District and the District will supply the requested funds within three (3) calendar days of HCCA's notification of the District of the need for same, provided that for unanticipated Emergent Expenses, HCCA shall have the right to provide a shorter notice period. HCCA shall not be obliged to fund Operating Expenses or other expenses hereunder or provide funds to accommodate shortfalls in revenue, except where an expense is specifically and expressly allocated to HCCA herein. Notwithstanding the foregoing, HCCA, may, in its sole and absolute discretion, advance funds as provided in <u>Section 2(g)(i)</u>. HCCA shall not be in default hereunder if HCCA's failure to comply with the terms of this Agreement is due to the lack of adequate funds provided by the District.
- (i) Notwithstanding anything in this Agreement to the contrary, in the event the District fails to timely advance funds as required hereunder and/or meet any of its payment obligations under this Agreement, HCCA shall have the right, but not the obligation, in its sole and absolute discretion, to advance funds or agree to undertake to advance funds to any Person, as a loan to the District to meet the shortfall caused by the District's failure. All sums advanced by HCCA pursuant to such agreements or undertakings shall be for the District's account. The District shall pay HCCA interest on all advanced funds at the rate set

forth in <u>Section 19(d)</u> and the principal, upon demand by HCCA. Any advance made shall be evidenced by a promissory note issued by the District in an amount equal to the amount advanced.

- (ii) To the extent HCCA advances funds, this Agreement constitutes a security agreement pursuant to which the District provides HCCA with a lien on all of the District's Assets (as defined herein), to the extent allowed by Law, and HCCA shall have the right to file a Uniform Commercial Code financing statement with respect to such obligation without the signature of the District.
- (iii) HCCA shall have the right to execute the above described promissory note on behalf of the District, to the extent permitted by Law. The District hereby irrevocably appoints HCCA as its attorney-in-fact coupled with an interest with full power to prepare and execute any documents, instruments and agreements, including, but not limited to, any note evidencing the advance or loan and any Uniform Commercial Code financing statements, continuation statements and other security instruments as may be appropriate to perfect and continue its security interest in favor of HCCA.

(h) Charitable Care and Operational Support Fund.

- (i) The District recognizes that the continued operation of the Hospital and Clinics and Other Facilities in accordance with the District's historical role as the primary provider of healthcare for the indigent and uninsured populations of Tulare County, California, precludes operation of the Hospital and Clinics and Other Facilities for the provision of high quality healthcare without support from sources other than patient revenues, especially in light of increasing indigent and charity populations and adverse reimbursement changes. The District has determined that in light of the increasing healthcare costs it is in the best interest of the District to subsidize the cost of providing healthcare services for the indigent and uninsured populations of Tulare County, California and surrounding areas through the arrangement set forth herein and that the provision of sufficient funds for such care is essential.
- (ii) Except for funds required to be held by the District to support principal and interest on the Bonds and such other amounts as may be required to satisfy covenants under the Bonds, that all funds derived from the District's regular annual tax and assessments shall be conveyed by the District to HCCA, on not less than a monthly basis, to be held by HCCA (the "Charitable Care and Operational Support Fund") to use to pay expenses incurred in connection with the operation and maintenance of the Hospital and the Clinics and Other Facilities in accordance with the provisions hereof, including the cost of providing charitable care, as provided herein. Notwithstanding the foregoing, the balance contained in the Charitable Care and Operational Support Fund shall not exceed the sum of ten percent (10%) of the estimated annual expenditures related to the Hospital and the Clinics and Other Facilities, if disbursements would otherwise require a written order of the District's President and Secretary, as provided under applicable Law.
- (iii) Upon termination of this Agreement, any amounts remaining in the Charitable Care and Operational Support Fund shall be: (i) transferred to the Subsidy Fund established under the Long Term Operating Agreement, if the parties hereto enter into such agreement or (ii) returned to the District by HCCA.
- (iv) The District shall use its reasonable commercial efforts to (i) obtain the consent of any Bond trustees required to effectuate and fund the foregoing Charitable

Care and Operational Support Fund arrangement as soon as reasonably practicable and (ii) reasonably minimize the amount of funds required to be held by the District to support principal and interest on the Bonds and such other amounts as may be required to satisfy covenants under the Bonds.

- (v) HCCA shall provide the District with a quarterly statement of the charitable care provided, including such care provided with funds from the Charitable Care and Operational Support Fund.
- (vi) HCCA shall have, to the fullest extent allowed by Law, the right to withdraw funds from the Charitable Care and Operational Support Fund, as it deems necessary or advantageous, for the operation of the Hospital and Clinics and Other Facilities and the provision of healthcare services, including amounts for capital expenditures.
- (vii) The District shall assure that its funds are used to support the Hospital and the Clinics and Other Facilities and to provide charitable care therein and are not diverted to other uses.

(i) Cooperation and Responsiveness.

- (i) The District and its Governing Body shall fully and timely cooperate with HCCA and shall be responsive and available to HCCA during the Term in order that HCCA can carry out its duties and obligations hereunder.
- (ii) In any instance in which the District (or the Governing Body) has an obligation to provide input or decide an issue, or provide (or withhold) its approval or consent under the terms of this Agreement, the District (or the Governing Body) shall do so in accordance with Section 23(r). Unless a specific period of time is set forth for a particular act, a reasonable period of time for the District to provide input or decide an issue, or provide (or withhold) its approval or consent shall generally be within five (5) to seven (7) days.
- (iii) In addition to the obligation to provide funds to HCCA, the District will timely provide HCCA with the necessary equipment and other resources to enable HCCA to fully and timely perform its services hereunder.

Relationship.

- (i) Except as specifically authorized hereunder, the District shall not interfere, directly or indirectly, with HCCA's decisions or the daily Operations, and shall not interfere with HCCA's ability to perform its obligations hereunder. The District representatives shall not access the Hospital and the Clinics and Other Facilities, except: (i) upon prior arrangement with HCCA, (ii) in the event of emergency; or (iii) as may be required pursuant to Subsection 2(d)(i)(3). Except upon request of HCCA, individual members of the District's Governing Body, shall not issue directions to HCCA, except following and in accordance with the formal actions of the District's Governing Body.
- (ii) The District representatives' communications, formal and informal, regarding HCCA and the Operations with Persons associated or affiliated with the Operations or HCCA, shall be conducted exclusively with Persons designated by HCCA's manager or chief executive officer.

- Neither the District nor its representatives shall (nor cause or encourage others to) disclose confidential or negative information regarding, or take any action or omit to take any action that is materially detrimental to the reputation of (anything which might tend to bring a party into public disrepute, hatred, contempt, scorn, scandal, or ridicule, or which might tend to reflect unfavorably on or otherwise degrade such party), HCCA or any of the other HCCA Parties, or make any statements, verbally, in writing or otherwise, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of HCCA, or of the other HCCA Parties, to anyone other than HCCA's manager or chief executive officer. Notwithstanding the foregoing, negative information may be discussed within official District Governing Body meetings and in connection with its internal operations, provided that if such information is used in a non-confidential forum, the District shall use reasonable efforts to verify the veracity and objectivity of such information prior to disclosing same in a non-confidential forum. However, nothing herein shall prevent the District or any of its representatives from testifying truthfully in a legal proceeding or governmental administrative proceeding. The District acknowledges and agrees that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to, the news media, bondholders, industry analysts, competitors, strategic partners, vendors, employees (past and present), and clients.
- (iv) The parties acknowledge that: (1) this Section is a material provision of this Agreement; (2) any breach of this Section shall be a material breach of this Agreement, and (3) a breach of this Section would cause irreparable harm.
- Standards of Performance. The District acknowledges that while HCCA shall expend its commercially reasonable efforts in performing its obligations under this Agreement, HCCA does not guarantee any particular results, notwithstanding projections which may be made by HCCA. HCCA's projections and forward looking statements are based on estimates and expectations, and reasonably available competitive, financial, economic and other data, and as a result are inherently uncertain. Actual results could differ materially from those anticipated as a result of a variety of factors. HCCA shall use its commercially reasonable judgment in directing the Operations. The parties acknowledge that implementation of the District's charitable care purposes may not permit the maximization of the District's profits. The District is a California Health Care District organized and operating under the Hospital Law with, inter. alia., a charitable mission, and it has under the Hospital Law certain responsibilities and obligations, including, but not limited to, obligations to provide charity care and indigent care. At all times, HCCA, shall, as required by Law, follow the charity and indigent care policies and obligations of the District (provided that the Hospital and the Clinics and Other Facilities' financial obligations in that regard shall not be materially changed unless such change is required by applicable Law) and shall assist the District in meeting all of the District's required obligations under the Hospital Law. The District will promptly notify HCCA of any changes to any policy, procedure, or the District Bylaw which may impact the Hospital and the Clinics and Other Facilities' charity care obligations.

3. Virtual Joint Venture Economic Participation.

(a) <u>District Contribution.</u> On the Effective Date, the District shall convey to HCCA (or cause to be conveyed) to the virtual joint venture the exclusive right to use, during the Term, all of its assets (whether real or personal property, or tangible or intangible property), constituting and associated with the Hospital and the Clinics and Other Facilities, together with all other assets of the District as HCCA shall designate, provided that the foregoing shall not constitute a grant to HCCA of a proprietary or ownership interest in any of such assets. In

furtherance of the foregoing, on the Effective Date, the District shall convey to HCCA (or cause to be conveyed) the exclusive right to use the following assets:

- (i) all inventory and supplies, including, but not limited to, office, foodstuffs, medical, disposables, linens, prescription medications and pharmaceutical inventories and supplies and other inventories and supplies of every kind and nature used in connection with the Operations;
- (ii) all policies and procedures manuals, operating manuals, training materials, marketing, sales and promotional materials, intellectual property including, but not limited to, all patents, trademarks, service marks, copyrights (whether or not registered) and registrations and applications therefore, trade names, trade secrets, confidential know-how and similar proprietary information, and/or computer software owned by the District;
- (iii) all administrative records, financial books and records, employee records, including, but not limited to, all books, records, files, computer software, data or databases, correspondence, memoranda, notes and other documents or papers and other evidence thereof relating to the Operations;
- (iv) all patient medical records, medical staff records and medical/administrative libraries:
- (v) copies of all other books and records of or relating to the Operations;
- (vi) all Permits (including, but not limited to, any Life Safety Code or similar waivers, variances and any certificates of need), relating to the Operations;
 - (vii) goodwill;
 - (viii) all vehicles used in the Operations:
- (ix) the District's rights and interests in and to its provider number and provider and reimbursement agreement under the Medicaid/Medicare programs, managed care contracts, insurance contracts and any other third party payor programs, but only to the extent that the same are assignable to HCCA to use during the Term, but only to the extent that HCCA accepts such right to use such arrangements;
- (x) all of the District's rights and interests in all Contracts set forth on Exhibit D to this Agreement (the "Assumed Contracts"). Notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute an agreement to assign any Contract or any claim, right or benefit arising thereunder or resulting therefrom, if a consent has not been obtained or if an attempted assignment thereof would be ineffective. If any such consent has not been obtained as of the Effective Date, or if an attempted assignment of any such Contract would be ineffective, (a) the District shall so advise HCCA and (b) the District shall reasonably cooperate with HCCA to obtain such consent, and absent obtaining such consent, in making commercially reasonable arrangements designed to provide to HCCA the benefits under such Contracts, including enforcement for the benefit of HCCA of any and all rights of the District against a third party arising out of any breach or cancellation by such third party or otherwise. Fees, expenses and payments under all Assumed Contracts shall be pro-

rated as of the Effective Date. Expenses under the Assumed Contracts shall be paid as provided in <u>Section 19(c)</u>.

- (b) <u>Satisfaction of Bond Obligations</u>. At its sole cost and expense, the District shall do all things necessary, desirable, and appropriate to pay or, otherwise satisfy the indebtedness related to the Hospital and the Clinics and Other Facilities, including the indebtedness related to the Project construction. Notwithstanding the foregoing, HCCA shall provide oversight of the District's funds and shall assist the District in making timely payments of its liabilities, including the Bonds and other obligations. It is specifically agreed and understood, however, that HCCA's obligations under this subsection are to assist in transmitting payments, subject to availability of District funds to make such payments. Nothing contained herein shall obligate HCCA to make any such payments from its own funds or resources or to advance any monies whatsoever to the District. However, HCCA shall have the right to pay such amounts, in its discretion, from the Charitable Care and Operational Support Fund. Further, HCCA shall not be liable either primarily or as guarantor for debts of the District as a result of HCCA's services hereunder.
- (c) HCCA Contribution. HCCA may, in its sole and absolute discretion, but shall not be required to, contribute working capital to the joint venture created hereunder, as same may be needed for the Operations, from time to time, and management resources to the joint venture created hereunder and provide all of the operational and strategic planning for the joint venture created hereunder.
- (d) <u>Economic Distribution</u>. During the Term, the District shall receive the net income resulting from the Operations in accordance with the following:
- (i) The annual net operating income from the Hospital and the Clinics and Other Facilities (calculated in accordance with GAAP) shall be determined for each fiscal year on a combined basis, and then allocated to the District after subtracting HCCA's fees set forth herein, including all expense reimbursement and the Operating Fee described in Section 19.
- (ii) If any losses are incurred in the operation of the Hospital and the Clinics and Other Facilities, such losses shall be the sole responsibility of the District.
- (iii) Distributions of allocated net income to the District shall be made when funds are reasonably available to do so, after considering the capital and operating needs of the Hospital and the Clinics and Other Facilities, including reasonable reserves determined in the sole and absolute discretion of HCCA.
- (iv) "True-up" payments shall be made between the parties, as may be necessary to reflect the proper allocation of income.
- (e) <u>Proration of Expenses and Revenues.</u> All expenses and revenues shall be prorated between the District and the virtual joint venture with HCCA acting as the joint venture's agent, as of the Effective Date. All prorations shall be made on the basis of actual days elapsed in the relevant accounting, billing or revenue period and shall be based on the most recent information available. "True-up" payments shall be made between the parties, as may be necessary to reflect the actual amount of any expense or revenue previously allocated between the parties based upon incomplete or inaccurate information or an estimate. The

parties shall each make such records available for inspection by the other party as are reasonable to demonstrate the accuracy of any prorations and adjustments.

4. HCCA'S Operational Covenants.

- (a) Licensure. During the Term, HCCA shall: (i) maintain, in its name, in full force and effect, all necessary Permits required by applicable Law for the Operations; (ii) the Hospital and the Clinics and Other Facilities which are engaged in the Operations will be certified to participate in the Medicare program under Title XVIII of the Social Security Act and the Medi-Cal program, California's Medicaid program; (iii) HCCA will provide to the District copies of any Permits related to the Operations upon request; and (iv) HCCA will promptly notify the District of any change, relinquishment, revocation or suspension of, or the imposition of any material restriction to, any Permits.
- (b) <u>Mission, Vision, Values and Policies</u>. HCCA will conduct the Operations in compliance with HCCA's mission, vision, values and ethical policies and will operate under HCCA's clinical and administrative policies, systems, and procedures and standards, as they may be amended, except as may otherwise be required by <u>Subsection 2(d)(i)(3)</u>. The District enters into this Agreement with HCCA after having determined that HCCA's mission, vision, values, and ethical policies are consistent with the mission and purposes of the District to provide access to high quality health services to the public in the District Service Area and access to specialized services to District residents.
- (c) <u>Decision-making</u>. HCCA may make all decisions regarding the Operations, in its sole and absolute discretion, recognizing that HCCA requires the flexibility, in its sole and absolute discretion, to determine how to deliver high quality healthcare services while maintaining financially sustainable Operations, except as provided in Subsection 2(d)(i)(3).

(d) Medical Staff.

- (i) A separate medical staff (the "Medical Staff") will be maintained at the Hospital with credentialing services provided by HCCA. HCCA shall adopt Medical Staff Bylaws for the Operations effective on the Effective Date, and shall credential, appoint and grant Medical Staff privileges and membership status to physicians and other health care professionals, as is appropriate for the Hospital and the Clinics and Other Facilities in HCCA's sole and absolute discretion, except as provided in <u>Subsection 2(d)(i)(3)</u>. HCCA shall be the governing body that approves the Medical Staff Bylaws, rules and regulations. Nothing herein restricts HCCA's ability to amend the Medical Staff Bylaws as it deems necessary and appropriate in its sole and absolute discretion, except as provided in <u>Subsection 2(d)(i)(3)</u>.
- (ii) The District shall provide HCCA with a confidential written disclosure containing a brief description of all adverse actions taken against Medical Staff members of applicants in the past three (3) years that are not disclosed in the minutes of the meetings of the Medical Executive Committee of the Medical Staff.
- (e) <u>Management and Governance</u>. HCCA shall set strategic direction and provide strategic and operational planning for the Operations. HCCA shall have overall governance authority and responsibility for the Hospital and the Clinics and Other Facilities, except as provided in <u>Subsection 2(d)(i)(3)</u>. HCCA will establish and select members of a community board to provide advice regarding the Operations, in its sole and absolute discretion. A majority of the members of the community board shall reside in the District and the initial

search committee for members of this community board shall include up to two (2) Persons selected by the District.

- (f) <u>Programs</u>. The District shall have the right to: (i) reasonably request information regarding HCCA's performance hereunder, as may be required to satisfy its obligations under applicable Law and the Bonds, (ii) exercise taxing authority sufficient to satisfy debt obligations associated with the Hospital and the Clinics and Other Facilities; (iii) participate in Major Decisions, as provided in <u>Subsection 2(d)(i)</u>, (iv) dispose of surplus District assets (as defined herein) not used by HCCA under this Agreement, and (v) otherwise perform its statutory functions.
- (g) <u>Charity Care.</u> HCCA will apply to the Operations the charity care policies established by HCCA (subject to the District's rights under <u>Subsection 2(d)(i)(1) and (3)</u>), which shall, subject to the financial performance of the Hospital and the Clinics and Other Facilities, generally be consistent with the existing charitable policies of the Hospital, a copy of which is set forth in Exhibit E to this Agreement.
- (h) Records. On the Effective Date, the District will provide HCCA with all patient, medical staff, personnel, and other records of the District necessary for Operations including, without limitation, medical records, billing records, equipment records, operating manuals, employment records and financial data related to Operations and the Hospital and the Clinics and Other Facilities, and HCCA agrees to maintain such records during the Term pursuant to HCCA's policies and procedures. HCCA will provide reasonable access to such records to the District and its agents for preparation of cost reports and other post-closing filing, preparation of the District financial statements relating to the period prior to the Effective Date, defense of investigations and claims, and other reasonable purposes. HCCA will be deemed to have custody but not ownership of such records.

(i) Annual Budget.

- (i) HCCA shall be responsible for preparation, presentation, monitoring, and reporting of the annual operating and capital budgets (collectively, the "Annual Budget"), except as may otherwise be required by <u>Subsection 2(d)(i)(3)</u>. Each proposed Annual Budget shall set forth an estimate of operating revenues and expenses for the next fiscal year, together with an explanation of anticipated changes in utilization, charges to patients and clients, payroll rates and positions, non-wage cost increases, and all other factors differing significantly from the then-current year. HCCA shall be responsible for the oversight and review of the Annual Budgets, except as may otherwise be required by <u>Subsection 2(d)(i)(3)</u>. The Annual Budget will be created and implemented to coincide with District's fiscal year, which is July 1st through June 30th of the following year.
- (ii) Subject to the limitations set forth in <u>Section 2(g)</u>, HCCA shall make commercially reasonable efforts to oversee the management of the Hospital and the Clinics and Other Facilities so that the actual revenues, costs, and expenses of the operation and maintenance of the Hospital and the Clinics and Other Facilities shall be consistent with the Annual Budget. Inclusion of any item within the Annual Budget shall constitute all necessary approval for HCCA to effectuate the budgeted item. Notwithstanding anything to the contrary herein, HCCA shall have the right, in its sole and absolute discretion, to make any expenditures necessary on an emergent basis to avoid or mitigate damage to the Hospital and the Clinics and Other Facilities, obtain equipment repairs or to avoid or mitigate injury or potential injury to Persons or property or that are necessary on an emergent basis to comply with any Law or to

cure or prevent any violation of any Law, whether or not provided for or within the amounts provided for in the Annual Budget for the applicable year (collectively, the "Emergent Expenses").

(j) HCCA may hire or retain any consultants, accountants, attorneys or other professional personnel (collectively, "Consultants") which HCCA, in its sole and absolute discretion, determines it is necessary or appropriate to assist HCCA in carrying out its duties and responsibilities under this Agreement. The expense of any Consultants so retained shall be an expense of the District, but HCCA shall retain any such Consultants without the approval of the Governing Body, if the cost of such services shall exceed \$100,000 in any calendar year for such services, unless otherwise set forth in the approved Annual Budget.

5. Fees and Revenues.

Commencing on the Effective Date, HCCA shall have the exclusive right to receive, consistent with the terms of this Agreement, all fees and revenues generated by and payments received from the Operations, including without limitation professional and technical fees for provision of clinical and ancillary services (such as imaging and laboratory) for application to Operating Expenses and other expenses (as provided in <u>Section 19(c)</u>) relating to the Operations, with the balance, if any, remitted to the District as provided in <u>Section 3(d)</u>.

6. Term and Termination.

- (a) <u>Initial Term</u>. The initial term of this Agreement shall commence on the Effective Date and shall end on the date that is fifteen (15) years from and after the Effective Date of the MSA, as set forth therein (such period, plus any renewal Terms, are collectively referred to as the "Term").
- (b) Extension of Term. Upon completion of the initial Term or of any subsequent renewal Term, this Agreement shall automatically renew for additional 10-year periods, unless either party shall send a notice of intent not to renew the Agreement to the other party not less than twelve (12) months prior to the end of the initial Term or then current renewal Term, as applicable. Each renewal Term shall be on the same terms and conditions set forth herein. Notwithstanding the foregoing, nothing herein is intended to permit the Term to exceed such term as is permissible under any tax-exempt bond financing requirements under applicable Law, with respect to the Bonds. In the event the Term exceeds any permissible term, then the Term shall be conformed to the maximum term permitted under such Law.
- (c) <u>Irrevocability of Agreement</u>. The District acknowledges and agrees that HCCA is entering into this Agreement in reliance on the long term nature of this Agreement, and further acknowledges that the rights, duties, powers and authority of each of the parties hereto, are intended to be non-terminable throughout the Term, except in accordance with the express provisions of this Agreement. The District acknowledges that neither party will achieve the benefits intended to be achieved if the District has any continuing right or power to terminate this Agreement, or the relationship hereby created, except in accordance with the express provisions of this Agreement. Accordingly as a substantial inducement to HCCA to enter into this Agreement and provide its proprietary systems and knowledge, the District hereby irrevocably waives and relinquishes any right, power or authority existing at Law or in equity to terminate this Agreement, except in strict accordance with the express provisions of this Agreement. The parties further hereby acknowledge that any breach of this Section will cause irreparable and permanent damage to HCCA, not compensable by money damages.

- (d) <u>District Default</u>. The following occurrences shall each be deemed an event of default by the District ("<u>District Default</u>") unless waived in writing by HCCA:
- (i) Material breach of any representation, warranty, or covenant of the District contained within this Agreement, after giving written notice to the District, and the District's subsequent failure to cure the breach (if such breach is capable of being cured) within sixty (60) days (or ten (10) days in the event of a monetary breach or thirty (30) days in the event of a breach of any provision requiring the District to: (i) provide HCCA with a consent or approval or (ii) execute an agreement or document hereunder); provided, however, that if the cure cannot reasonably be effectuated within the applicable cure period, a longer period shall be allowed not to exceed ninety (90) days, if the District has commenced to cure such breach in good faith or has otherwise provided adequate protection or security to protect HCCA's interest hereunder (which security shall be sufficient in HCCA's sole and absolute discretion) within the applicable cure period, and the District is proceeding with due diligence to effect a cure.
- (ii) The occurrence of any of the following: (a) the filing by the District of a voluntary petition in bankruptcy or for reorganization under any bankruptcy Law, or (b) the filing of a petition for the appointment of a receiver for all or any portion of the property of the District, or (c) the taking of any voluntary or involuntary steps to dissolve or suspend the powers of the District (unless such steps to dissolve or suspend are removed) within thirty (30) days, or (d) the consent by the District to an order for relief under the federal bankruptcy Laws or the failure to vacate such an order for relief within sixty (60) days from and after the date of entry thereof, or (e) the entry of any order, judgment or decree, by any court of competent jurisdiction, on the application of any creditor of the District or any other Person, adjudicating the District as a bankrupt, or to be insolvent, or approving a petition seeking reorganization or the appointment of a receiver, trustee or liquidator of all or a substantial part of the District's assets, if such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days. In the event that the District becomes a debtor under the Bankruptcy Code, the District agrees, to the extent permitted under applicable Law: (a) not to reject this Agreement; (b) to designate this Agreement as a non-executory agreement.
- If HCCA, at any time and in good faith, shall deem itself insecure and for the purposes of this Agreement, HCCA shall be entitled to deem itself insecure when some event occurs, fails to occur or is threatened or some objective condition exists or is threatened which significantly impairs the prospects that any of the obligations of the District hereunder will be paid when due, or which significantly affects the financial or business condition of the District. If HCCA deems itself insecure, it shall have no obligation to continue performing hereunder more than thirty (30) days from and after it notifies the District that it has deemed itself insecure, unless the District provides HCCA with an unconditional, irrevocable letter of credit (the "Letter of Credit") from a U.S. banking institution acceptable to HCCA, insured by a federal insurance agency ("Issuer"). The Letter of Credit shall (i) meet the requirements of the "Uniform Customs and Practice for Documentary Credits," ICC No. 500 (1993 Edition), (ii) name HCCA as beneficiary, (iii) be in an amount equal to the lesser of (A) the Termination Fee or (B) such lesser amount as may be specified by HCCA, in its sole and absolute discretion, (iv) be payable in full or partial draws against HCCA's sight draft, (v) include an "evergreen" provision which provides that the Letter of Credit shall be renewed automatically on an annual basis following its issuance, unless the Issuer delivers thirty (30) days prior written notice of cancellation to HCCA, (vi) have an initial expiration date no earlier than one year from the date of issue, and (vii) otherwise be in form and substance satisfactory to HCCA. In the event the Letter of Credit is ever not renewed when required hereunder, HCCA shall have the right, immediately upon receipt of the notice of cancellation described above, to draw upon the

Letter of Credit and hold the proceeds thereof as a cash security deposit. Provided that the District is not then in default of any of its obligations hereunder and no act, omission, fact, circumstance, condition or event that with the giving of notice or the passage of time or both would constitute a default hereunder exists, HCCA shall return the Letter of Credit to the District within forty-five (45) days after the expiration or termination of this Agreement. If the Letter of Credit is not timely provided, then HCCA shall have the right to immediately terminate this Agreement (with no right on the part of the District to cure same) and receive the Termination Fee.

(e) Liquidated Damages.

- (i) Each of the parties acknowledges that it would be extremely difficult and impracticable, if not impossible, for HCCA to ascertain with any degree of certainty the amount of damages that would be suffered by HCCA in the event of the occurrence of a District Default. In the event this Agreement is terminated as a result of any District Default, or for any other reason other than a termination by HCCA under Section 6(g)(i), or an HCCA Default, the District shall pay a fee (the "Termination Fee"), which fee is not a penalty, but rather is liquidated damages in accordance with California Civil Code Section 1671, which the parties have negotiated in good faith and have agreed is a reasonable fee under the circumstances. The Termination Fee shall be paid within five (5) days after the effective date of the termination of this Agreement.
- (ii) The Termination Fee shall be an amount equal to Eighty Seven Thousand Five Hundred Dollars (\$87,500) per month first increased by CPI, as provided below, and then multiplied by the remaining number of months in the Term (not to exceed 120 months) at the time of the termination, discounted to its present value using the discount rate of the Federal Reserve Bank of San Francisco at the time of termination plus one percent (1%).
- (1) "CPI" means the monthly index of the U.S. City Average Consumer Price Index for Urban Wage Earners and Clerical Workers Medical Care Services (1982-84 equals 100) published by the United States Department of Labor, Bureau of Labor Statistics or any successor agency that shall issue such index. In the event that the CPI is discontinued for any reason, the parties shall use such other index, or comparable statistics, on the cost of medical care services in the United States, as shall be computed and published by any agency of the United States or, if no such index is published by any agency of the United States, by a responsible financial periodical of recognized authority.
- (2) The Termination Fee shall be adjusted for inflation by multiplying the above stated Termination Fee by the CPI percentage increase between January 1, 2015 and the date the Termination Fee is payable, using the latest published data since the last adjustment.
- (iii) Notwithstanding the foregoing, nothing herein is intended to permit the Termination Fee to exceed such amount as is permissible under any tax-exempt financing requirements under applicable Law, with respect to the Bonds. In the event the Termination Fee exceeds any permissible limit upon such fees, then the Termination Fee shall be reduced to the maximum termination or similar fee permitted under such Law, however denominated, and the District shall enter into any agreements necessary to minimize any reduction to the Termination Fee.

- (iv) If the District fails to pay the Termination Fee when due, then the Termination Fee, or any unpaid portion thereof, shall bear interest from the date such payment was required to be made until the date of payment at the interest rate set forth in Section 19(d).
- (v) If upon termination of this Agreement, the District contends that the Termination Fee is not due and owing and HCCA contends that same is due and owing, the District shall be obliged to deposit within three (3) days the amount of the Termination Fee into an Escrow account with a national bank with not less than \$50,000,000,000 in assets. The funds shall be released to the applicable party upon the sooner to occur of: (a) mutual instructions of HCCA and the District; (b) final non-appealable order of a court directing the release of the funds to a party; or (c) to the District if HCCA has not contested, in a judicial proceeding, that the funds are owed to it within twenty four (24) months of the termination.
- (vi) This Section shall survive the expiration or termination of this Agreement.
- (f) <u>HCCA Default</u>. The following occurrences shall each be deemed an event of default by HCCA ("<u>HCCA Default</u>"), unless waived in writing by the District:
- (i) Material breach of any material covenant of HCCA contained within this Agreement, after giving written notice to HCCA, and HCCA's subsequent failure to cure the breach within sixty (60) days provided, however, that if the cure cannot reasonably be effectuated within such sixty (60) day period, a longer period shall be allowed, if HCCA has commenced to cure such breach or has otherwise provided adequate protection or security to protect the District's interest hereunder and HCCA is proceeding to effect a cure. In determining whether a breach has occurred, the District shall exercise its reasonable discretion in good faith and shall use its best efforts to assist HCCA in effectuating a cure.
- (ii) The occurrence of any of the following: (a) the filling by HCCA of a voluntary petition in bankruptcy or for reorganization under any bankruptcy Law, or (b) the filling of a petition for the appointment of a receiver for all or any substantial portion of the property of HCCA, or (c) the taking of any voluntary or involuntary steps to dissolve or suspend the powers of HCCA (unless such steps to dissolve or suspend are removed) within sixty (60) days, or (d) the consent by HCCA to an order for relief under the federal bankruptcy Laws or the failure to vacate such an order for relief within sixty (60) days from and after the date of entry thereof, or (e) the entry of any order, judgment or decree, by any court of competent jurisdiction, on the application of any creditor of HCCA or any other Person, adjudicating HCCA as a bankrupt, or to be insolvent, or approving a petition seeking reorganization or the appointment of a receiver, trustee or liquidator of all or a substantial part of HCCA's assets, if such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days.

(g) Early Termination Events.

- (i) Notwithstanding anything herein to the contrary, during the first thirty-six (36) months after the Effective Date of the MSA, HCCA shall have the option to terminate this Agreement before its expiration, upon not less than six (6) months' notice to the District.
- (ii) In the event either party should be determined by a Governmental Authority to be in violation of any Law, by virtue of this arrangement or this arrangement is otherwise deemed illegal by a Court of competent jurisdiction in a final non-appealable

determination ("<u>Jeopardy Events</u>"), the parties shall use best efforts to negotiate an amendment to this Agreement to remove or negate the Jeopardy Event. If they are unable to do so within six (6) months, either party may terminate this Agreement by notice to the other, provided that upon such termination the District shall be obliged to pay the Termination Fee as provided in Section 6(e).

(iii) In the event that: (A) (i) it shall be determined that the District has the right to: (i) make and enforce all rules, regulations and bylaws necessary for the administration, government, protection and maintenance of the Hospital and the Clinics and Other Health Care Facilities and the property belonging thereto or (ii) prescribe the terms upon which patients may be admitted thereto, as referenced in California Health and Safety Code § 32125(a) and (B) HCCA shall determine in good faith, in its sole and absolute discretion, that the District is exercising or threatening to exercise those rights in a manner that HCCA views as fundamentally inconsistent with HCCA's approach to the management of the Hospital and the Clinics and Other Facilities, then HCCA shall have the right to terminate this Agreement by notice to the District and upon such termination the District shall be obliged to pay the Termination Fee as provided in Section 6(e).

(h) Procedure.

- (i) In the event either party to this Agreement deems the other party to be in default of its obligations hereunder, then said party shall be required to provide notice of the alleged default to the other party, which notice shall contain a detailed description of the alleged default.
- (ii) If the claim of default is disputed by the party receiving such notice, within ten (10) business days thereafter the party receiving the notice shall give notice to the charging party that the party receiving such notice disputes that the factual matters alleged constitute a default under this Agreement. If the parties cannot resolve such dispute within ten (10) business days thereafter (commencing on the date that the charging party receives notice of the dispute) the parties shall submit such matter to binding arbitration in Los Angeles County, California, in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules and Procedure for Arbitration, and applying the Law of the State. Any determination by the arbitrator shall be final and binding upon the parties, and judgment thereon may be entered in any court having jurisdiction thereof. The costs of arbitration shall be borne equally by the parties. During the pendency of any such arbitration and until final judgment thereon has been entered, this Agreement shall not be terminated as a result of the alleged default which is in dispute.

(i) <u>Termination</u>.

- (i) In the event of a party's failure to cure a default within the time allowed herein for curing such default, the non-defaulting party may immediately terminate this Agreement by notice to the defaulting party, whereupon neither of the parties shall have any further obligations under this Agreement, except those obligations that by their terms or nature extend beyond the date of expiration or termination, and the non-defaulting party shall then have all rights and remedies available hereunder and at Law.
- (ii) The parties may mutually agree at any time to terminate this Agreement.

(j) Reconveyance of Use of Assets. Upon termination of this Agreement for any reason, other than entering into the Long Term Operating Agreement, HCCA shall convey to the District all rights of use in and to and possession of any and all of the District's facilities in its possession in order to preclude divesting the District from ownership of its facilities, as prohibited under California Health and Safety Code §32121(r).

7. HCCA Financial Responsibilities.

- (a) HCCA undertakes the following obligations:
- (i) HCCA shall pay, from District Funds (including the Charitable Care and Operational Support Fund) and/or revenues derived from the Operations, all Operating Expenses associated with the Hospital and the Clinics and Other Facilities. If the District fails to timely advance funds to HCCA hereunder, HCCA shall have the right, in its sole and absolute discretion, but not the obligation, to advance such funds, as provided in Section 2(g)(i);
- (ii) The parties believe that the Hospital and the Clinics and Other Facilities will not be subject to State excise taxes or property taxes. In the event, however, that such taxes shall be lawfully assessed against the Hospital or the Clinics and Other Facilities during the Term, HCCA shall pay, from District Funds (including the Charitable Care and Operational Support Fund) and/or revenues derived from the Operations, prior to delinquency all such assessments. The District authorizes HCCA to protest or contest any tax valuations or assessments and shall assist HCCA in assuring that the Hospital and the Clinics and Other Facilities are treated as exempt assets.
- (iii) HCCA shall pay, from District funds (including the Charitable Care and Operational Support Fund) and/or revenues derived from the Operations and perform the obligations arising under the Assumed Contracts. If the District fails to timely advance funds to HCCA hereunder, HCCA shall have the right, in its sole and absolute discretion, but not the obligation, to advance such funds, as provided in Section 2(g)(i);
- (b) Except as set forth above, no further payments or performance shall be due and owing from HCCA to the District or otherwise in connection with Operations.
- (c) HCCA, at its expense, may at any time, install or commence the installation of HCCA Property in the Hospital or the Clinics and Other Facilities, to such extent as HCCA may deem desirable. HCCA may also remove any of HCCA Property so installed by it. HCCA's Property shall remain the property of HCCA unless purchased by the District pursuant to this Section. The District shall have, at its option, the right to purchase HCCA Property as of the termination of this Agreement, for other than the District's Default, for a sum equal to HCCA's cost less ordinary depreciation. HCCA shall have the right to remove all HCCA Property from the Hospital and the Clinics and Other Facilities upon termination of this Agreement, if purchase is not made by the District.

8. Service Covenants.

HCCA shall:

(a) Operate a "24/7" (all hours) emergency department service, which need not be located in the Hospital but meets the requirements of applicable Law from time to time.

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- (b) Provide, as required by Law, medical care to patients regardless of patients ability to pay, subject to the charitable care polices of HCCA;
- (c) Not enact financial admission policies that have the effect of denying essential medical services or treatment solely because of a patient's immediate inability to pay for the services or treatment,, where such treatment is required under applicable Law, including the Emergency Medical Treatment and Active Labor Act (EMTALA);
- (d) Participate in and ensure that admission to and services of Operations are available to the beneficiaries of governmental reimbursement programs (Medicaid / Medicare) without discrimination or preference because they are beneficiaries of those programs;
- (e) Provide reports to the District, including financial information for Operations, together with such information as may be required for the District to report to the community on the progress it is making towards the community's health needs;
- (f) Conduct the Operations without discrimination based on race, color, sex, marifal status, sexual orientation, ethnicity, or national origin; and
- (g) Conduct the Operations, if California Health and Safety Code § 32125(a) is determined to be applicable as provided in <u>Subsection 2(d)(i)(3)</u>, in accordance with: (i) all rules, regulations and bylaws the Governing Body determines are necessary for the administration, government, protection and maintenance of the Hospital and the Clinics and Other Facilities and the property belonging thereto and (ii) the Governing Body's prescribed terms upon which patients may be admitted thereto.

9. Names and Branding.

- (a) <u>License</u>. HCCA shall have the exclusive, nontransferable, royalty free license and right (but not the obligation) to use the names "Tulare Regional Medical Center", "Tulare Hospital" and variations thereof and all other related names, logos, marks of the District which are and have been used by the District in connection with the operation of the Hospital and the Clinics and Other Facilities. The District shall not continue to use such names and logos in connection with the provision of healthcare services, but may use same in connection with its operation of other District non-healthcare programs. Neither party has any obligation to register, defend or preserve such names or marks.
- (b) <u>Signage</u>; <u>Branding</u>. HCCA shall have the right to install signs upon the interior and exterior of the Hospitals and the Clinics and Other Facilities regarding the conduct of its business, subject to compliance with applicable Law. The Operations will be conducted under HCCA's name and in accordance with HCCA's naming and branding standards. Nothing herein licenses the District to use HCCA's names, brands or logos in conducting its business.
- (c) <u>Identification of the District</u>. HCCA will identify in appropriate public locations, websites, and other media, the provision of support to the healthcare Operations by the District.

10. Assignment and Sublicensing.

- (a) HCCA shall not sublicense all or substantially all of the Hospital or the Clinics and Other Facilities, or in any manner assign or transfer its rights and obligations under this Agreement without the prior written consent of the District; provided, however, that HCCA, in its sole and absolute discretion, may sublicense, transfer, assign, or delegate any portion of its rights or obligations under this Agreement to an Affiliate or to another Person that is acquiring all or substantially all of the assets and liabilities of HCCA, including a Person in which HCCA has an ownership interest, directly or indirectly, or with which HCCA may merge, affiliate, acquire or be acquired. Nothing herein prevents HCCA from subcontracting with third parties to perform any of the services required of HCCA hereunder.
- (b) The District may not in any manner assign or transfer its rights under this Agreement without prior written consent of HCCA.
- (c) Any purported assignment in violation of this Section shall be null and void.

11. Exclusivity.

- The District agrees that as a result of this Agreement with HCCA, HCCA has been granted the exclusive right and responsibility to conduct the Operations in the District's facilities, including the Hospital and the Clinics and Other Facilities, during the Term in accordance with the terms of this Agreement. Therefore, during the Term, the District shall not directly or indirectly own, lease, manage, operate, market, or engage in any business, enterprise, or other activity relating to the operation of a hospital, clinic, home health, or medical clinics, or any other activity which is competitive with any activity of HCCA during the Term within the District Service Area other than in accordance with this Agreement; provided that this Section shall not be construed as prohibiting the District from providing: (i) non-healthcare services; (ii) services to respond to an epidemic or other public health emergency or (iii) other services as it may be required by law to provide, that HCCA is not providing or willing to provide. The District further acknowledges and agrees that enforcement of the provisions of this Section would not unduly impact the availability of medical services within the District Service Area, or otherwise pose a threat of harm to the public health. The District further agrees that if the District should engage in a health-care-related activity or any other activity which is prohibited hereunder, in violation of the provisions of this Section 11, then such activity shall constitute a material breach of this Agreement, and shall afford HCCA its full rights of termination.
- (b) During the Term, the District shall not, within the District Service Area, directly or indirectly, operate or invest in the provision of medical or other clinical healthcare services, except with the prior consent of HCCA, unless required to do so under applicable Law. In the event, the District in good faith believes that a need exists for additional health care services or programs not currently provided within the District Service Area, the District shall first bring such recommendations to HCCA which will consider undertaking such services or programs itself. If HCCA elects not to do so, the District may elect to provide such non-clinical healthcare services that are not competitive with services offered by HCCA, itself or to pursue alternate funding sources for operation of the new program. In addition, HCCA may at any time solicit input of the District regarding additional programs and services in the District Service Area.

(c) To the fullest extent allowable by Law, if any provision of this <u>Section 11</u> is held to be invalid or unenforceable, the invalid or unenforceable provision shall be deemed stricken from this Agreement, and the remainder of this <u>Section 11</u> shall nevertheless continue in full force and effect.

12. Employee Matters.

- (a) <u>Employment</u>. As of the Effective Date, the District shall terminate all of its employees at the Hospital and at the Clinics and Other Facilities. HCCA, shall have the right, but not the obligation to offer employment on an at-will basis (or otherwise) and in accordance with HCCA's customary and usual new employee screening policies and procedures to the former employees of the District, or any of them.
- (b) <u>Wages</u>. Each employee that accepts such offer and is hired by HCCA will be employed by HCCA at a base salary and wage as determined by HCCA, in its sole and absolute discretion, and HCCA shall not have any responsibility for any retirement or other benefits accorded to such Person by the District historically, all of which shall remain the liability of the District.
- (c) <u>Employment Decisions</u>. Nothing herein shall be deemed to affect or limit in any way normal management prerogatives of HCCA or its Affiliate with respect to employees or to create or grant to any such employees third party beneficiary rights or claims of any kind or nature, except as provided in <u>Subsection 2(d)(i)(3)</u>. HCCA will have exclusive authority with respect to employment decisions, including length of employment, regarding each employee, and will have the right to change compensation and benefits for all of its employees from time to time as HCCA may deem appropriate. Unless HCCA agrees otherwise in writing, HCCA shall not assume or be responsible for any existing District employment agreements or obligations.
- (d) <u>Seniority</u>. Employees hired by HCCA will not be entitled to retain their current seniority for purposes of benefits (i.e., benefit eligibility or accrual levels for PTO purposes).

13. Insurance and Casualty.

- (a) Insurance. HCCA shall maintain or obtain by purchase or self-insure for all risk property insurance including earthquake insurance covering the Hospital and the Clinics and Other Facilities and HCCA Property in an amount not less than full replacement cost. Such insurance (other than insurance covering HCCA Property) shall name the District as loss payee as its interests may appear. HCCA shall maintain by purchase or self-insurance for liability for operation of any motor vehicle, with limits of not less than \$1,000,000 combined single limit per accident. The cost of such insurance shall be paid as an Operations expense as provided in Section 19(c).
- (b) <u>Damage</u>. If the Hospital or the Clinics and Other Facilities should be damaged or destroyed by any peril covered by the insurance to be provided by HCCA under <u>Section 13(a)</u>, HCCA shall promptly notify the District of such damage. If any Substantial Part of the Hospital or Clinics and Other Facilities should be destroyed by any peril covered by the insurance to be provided by under <u>Section 13(a)</u>, or if it should be so damaged thereby that rebuilding or repairs cannot be completed within two hundred (200) days after the date of such damage, as determined by HCCA in its sole and absolute discretion, then the Hospital and the Clinics and Other Facilities and other assets shall be re-conveyed back to the District (as

provided in <u>Section 6(j)</u>) and this Agreement shall terminate and be of no further force and effect, provided that HCCA shall be entitled to receive the Termination Fee. If the Hospital and the Clinics and Other Facilities should be damaged by any peril covered by the insurance to be provided by HCCA under <u>Section 13(a)</u>, but only to such extent that rebuilding or repairs can, in the sole and absolute discretion of HCCA, be completed within two hundred (200) days after the date of such damage, this Agreement shall not terminate, and HCCA shall, thereupon proceed with reasonable diligence to rebuild and repair the affected facility to substantially the condition which existed prior to such damage to the extent of proceeds from such insurance. The District shall be responsible to fund restoration costs in excess of the proceeds from such insurance.

- (c) <u>Waiver of Subrogation</u>. The District and HCCA hereby waive all rights to recover against each other, for any loss or damage arising from any cause or risk which would be covered in whole or in part, by insurance of the type required to be carried by each of them pursuant to this Agreement, or any other insurance actually carried by either of them or reasonably and customarily carried by similarly situated parties to the extent such insurance would cover such loss or damage incurred by such party. The District and HCCA shall cause their respective insurers to issue waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Hospital and the Clinics and Other Facilities, and any cost for the issuance of such endorsements shall be borne by the original insured under such policies consistent with the terms of this Agreement.
- (d) <u>HCCA's Insurance</u>. HCCA shall obtain by purchase or self-insure throughout the Term, commercial general liability insurance against all claims, demands, or actions arising out of or in connection with the Operations after the Effective Date of the Hospital and the Clinics and Other Facilities. The limits of coverage maintained by HCCA for commercial general liability shall be not less than \$1,000,000 with respect to each occurrence, not less than \$3,000,000 general aggregate. The District shall be added as an additional insured to HCCA general liability policy but only with respect to the District's liability arising out of use or operation of the Hospital and the Clinics and Other Facilities. HCCA shall obtain by purchase or self-insure through the Term professional liability insurance covering its Operations. Professional liability insurance limits shall not be less than \$1,000,000 with respect to each occurrence and not less than \$3,000,000 in general aggregate. The cost of such insurance shall be paid as an Operations expense as provided in Section 19(c).
- (e) <u>District Insurance</u>. The District shall maintain and pay for "tail coverage" or comparable insurance coverage, to prevent any gap in insurance coverage for any liability arising from the District's actions or occurrences prior to the Effective Date. Such insurance shall have limits of liability in amounts and upon the terms required under the MSA. In addition, the District shall be responsible for obtaining entity and individual professional liability, D & O / employment practices liability, and commercial general liability coverage in commercially reasonable amounts for its operations after the Effective Date.

(f) Indemnity.

(i) Subject to <u>Section 13(c)</u>, HCCA covenants and agrees to hold harmless the District, its Governing Body, officers and employees from, and indemnify and defend them against, any and all liabilities, claims, penalties, fees, violations, fines, losses, costs, damages, Liens and expenses, including reasonable attorney's fees ("<u>Damages</u>"), in any way related to any material breach by HCCA of any covenant to be performed by it pursuant to this Agreement. This indemnity shall survive termination of this Agreement. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT (INCLUDING ANY

INDEMNIFICATION OBLIGATIONS), IN NO EVENT SHALL HCCA BE LIABLE (WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT OR TORT OR BASED ON A WARRANTY OR OTHERWISE) FOR (I) FAILURE TO REALIZE SAVINGS OR LOSS OF PROFITS, REVENUE, OR ANY OTHER INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, AND (II) DIRECT AND OTHER DAMAGES IN EXCESS OF THE AMOUNT OF OPERATING FEES EARNED BY HCCA UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS PRIOR TO THE DATE OF THE APPLICABLE CLAIM FOR DAMAGES, IN EACH CASE, EVEN IF HCCA HAS BEEN ADVISED OF POSSIBILITY OF SUCH DAMAGES.

- (ii) Subject to <u>Section 13(c)</u>, the District covenants and agrees to hold harmless HCCA, HCCA's, members, managers, officers and employees from, and indemnify and defend them against, any and all Damages, in any way related to (i) any breach by the District of any covenant to be performed by it pursuant to the Agreement, or (ii) any liability of the District arising from or related to the District activities, whether during or prior to the Term. This indemnity shall survive termination of this Agreement.
- (iii) A party entitled to indemnification under this Section shall make commercially reasonable efforts to (i) mitigate the amount of any indemnification claim it has or may have against the Person giving the indemnity and (ii) pursue claims under insurance policies relating to the facts and circumstances giving rise to the indemnification claim. For purposes of determining the amount of liability under this Section, appropriate reductions shall be made to reflect the amount actually recovered pursuant to any insurance policy or other third party recovery that is received by the party entitled to indemnification in respect of the facts and circumstances giving rise to the indemnification claim.
- (g) <u>Review</u>. Insurance coverage amounts for both parties will be reevaluated every five years and adjusted consistent with industry practices for similar operations as mutually agreed.

14. Condemnation.

- (a) If a Substantial Part of the Hospital or the Clinics and Other Facilities should be taken for any public or quasi-public use under Law, or by right of eminent domain, or by private purchase in lieu thereof, then HCCA may terminate this Agreement and (i) the operation of the Hospital and the Clinics and Other Facilities shall revert to the District, and (ii) any proceeds received from the proceedings referenced by this Section shall be distributed to the District, subject to HCCA's right to recoup the value of its interest in the joint venture created hereunder, in an amount not less than the Termination Fee.
- (b) If part of the Hospital or the Clinics and Other Facilities shall be taken for any public or quasi-public use under any Law, or by right of eminent domain, or by private purchase in lieu thereof, and this Agreement is not terminated as provided in <u>Section 14(a)</u>, the fact that space in the Hospital and the Clinics and Other Facilities has been taken by the taking shall not relieve HCCA from its obligation to fulfill its obligations hereunder; provided, however, that HCCA's obligations, as applicable, shall be reduced in accordance with the damage that occurs as a result of the taking, in HCCA's sole and absolute discretion.

15. Authority.

The District represents and warrants that it has full right and authority to enter into this Agreement.

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CONFIDENTIAL AND PROPRIETARY
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16. No Assumed Liabilities.

- (a) Unless otherwise expressly set forth herein, by execution of this Agreement, HCCA assumes no liabilities whatsoever of the District or any previous tenant or operator of the Hospital and the Clinics and Other Facilities, Including, but not limited to, liability for any claims, demands, actions, suits or other obligations arising from an occurrence prior to the Effective Date.
- (b) By executing this Agreement, the District hereby assumes no liabilities whatsoever of HCCA.

17. Recording; Estoppel; Time.

- (a) <u>Recordation</u>. At the request of either party and at the expense of the requesting party, the parties shall execute a short form memorandum of this Agreement which identifies this Agreement, the parties, the Term, the legal description of the real property upon which the Hospital and the Clinics and Other Facilities are located, the joint venture described herein and such other matters as the parties may agree. Such memorandum shall be recorded in the Office of the County Recorder of Tulare County, California at the expense of the requesting party.
- (b) <u>Estoppel Certificate</u>. Each party hereto agrees from time to time, within twenty (20) business days after request of another party hereto, to deliver to said other party hereto, a commercially reasonable estoppel certificate stating (if true) that this Agreement is in full force and effect, that no default exists under this Agreement, the unexpired Term of this Agreement, and such other matters pertaining to this Agreement as may be requested by a party hereto.
- (c) TIME IS OF THE ESSENCE IN THE PERFORMANCE OF ALL COVENANTS OF THIS AGREEMENT.

18. <u>Legal Compliance</u>.

- (a) <u>Compliance Plan</u>. HCCA has received a copy of the District's Compliance Policies and Procedures, including the Code of Conduct and the Physician Referral, Stark Law, and Anti-Kickback policies and procedures together with a copy of the District's Corporate Integrity Agreement with the HHS Office of Inspector General dated July 20, 2009 (the "CIA"). HCCA shall abide by these policies and procedures and applicable Law. Any recommendations and/or revisions of such policies made by HCCA must be reasonably designed to help assure compliance with applicable Law. HCCA will be given prompt written notice of any changes made to the foregoing. HCCA may develop and recommend changes to the District's existing Compliance Plan (the "Compliance Plan") for implementation during the Term. Any such recommendations and/or revisions to the Compliance Plan must be approved by the Governing Body. HCCA shall use its commercially reasonable efforts to implement the Compliance Plan. All costs of developing, implementing and maintaining the Compliance Plan shall be borne by the District.
- (b) <u>Government Regulations</u>. HCCA shall, subject to the limitations set forth herein, use its reasonable commercial efforts to help assure that: (1) the District continuously complies with all material applicable Laws, including without limitation, the Hospital Law, State and Federal False Claims Act, Civil Monetary Penalty Law, State and Federal Anti-Kickback

statutes, State and Federal self-referral prohibitions and applicable Medicare conditions of coverage and/or participation and (2) HCCA retains and maintains in good standing all necessary accreditations, licenses, permits, approvals and authorizations required for the ongoing operation of the Hospital and other Clinics and Other Facilities.

- (c) <u>Accreditation Compliance</u>. HCCA shall, subject to the limitations set forth herein, take all steps necessary to assist the District to continue meeting the accreditation standards of the applicable accrediting agencies, as they exist or may be changed from time-to-time, and as may be applicable to the Hospital and other Clinics and Other Facilities' then current accreditation(s). HCCA shall have the right to select and/or change the applicable accreditation agency for the Hospital, and if applicable, the Clinics and Other Facilities, in its sole and absolute discretion.
- (d) <u>Ineligible Persons Disclosure Obligation.</u> HCCA shall use reasonable commercial efforts to monitor that none of HCCA's employees employed at the Hospital and other Clinics and Other Facilities have been sanctioned, debarred or suspended or otherwise deemed ineligible to participate in Medicare, Medicaid or other Federal health care programs, and procurement, or non-procurement programs (collectively, an "Ineligible Person"). HCCA represents to the District that HCCA is not an Ineligible Person nor has any pending proceedings or received notice of any action or proceeding to exclude, debar, suspend, or otherwise declare HCCA ineligible under any federally funded health program. HCCA shall notify the District within three (3) business days after becoming aware of any fact or circumstance that would make HCCA an Ineligible Person.
- Access to Records. HCCA shall, in accordance with Section 1395x(v)(1) of Title 42 United States Code until the expiration of four (4) years after the termination of this Agreement, make available upon written request to the Secretary of the United States Department of Health and Human Services, or, upon request, to the Comptroller General of the United States Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to verify the nature and extent of the costs of the services provided by HCCA under this Agreement. HCCA further agrees that in the event HCCA carries out any duties under this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelvemonth period with a related organization, such agreement shall contain a clause to the effect that until expiration of four (4) years, or longer as may be required by Law, after the furnishing of such services pursuant to such subcontract, the related organization shall make available upon written request to the Secretary of the United States Department of Health and Human Services, or, upon request, to the Comptroller General of the United States Accounting Office, or any of their duly authorized representatives, a copy of such contract and such books, documents and records of such organizations as are necessary to verify the nature and extent of such costs. This Section is included pursuant to and is governed by the requirements of federal Law. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by the parties or any of the parties' representatives by virtue of this Agreement.
- (f) No Obligation to Refer Patients. Nothing contained in this Agreement shall require (directly or indirectly, explicitly or implicitly) either HCCA or its affiliates or the District or its affiliates, to refer any patients to one another or to use the Hospital or the Clinics and Other Facilities as a precondition to receiving the benefits set forth herein.

- (g) <u>Regulatory Filings and Approval</u>. The District shall cooperate fully with any and all regulatory filings necessary for the approval of the execution and implementation of this Agreement, including those related to HCCA's use of any Permit and Medicare / Medi-Cal provider agreements in its name during the Term.
- (h) <u>Tax and Medicare Effect</u>. None of the parties (nor such parties' counsel or accountants) has made or is making any representations to any other party (nor such party's counsel or accountants) concerning any of the tax or Medicare effects of the transactions provided for in this Agreement, as each party hereto represents that each has obtained, or may obtain, independent tax and Medicare advice with respect thereto and upon which it, if so obtained, has solely relied.

19. Operating Fee.

(a) Operating Fee. As HCCA's fee for the performance of the services under this Agreement, HCCA shall receive monthly (in advance on the first day of each month) an amount (the "Operating Fee") equal to the last monthly Management Fee charged to the District under the MSA immediately prior to the Effective Date of this Agreement multiplied by 1.25. The Operating Fee shall thereafter be increased as provided in Section 19(b).

(b) CPI Adjustment.

- (i) "CPI" means the monthly index of the U.S. City Average Consumer Price Index for Urban Wage Earners and Clerical Workers Medical Care Services (1982-84 equals 100) published by the United States Department of Labor, Bureau of Labor Statistics or any successor agency that shall issue such index. In the event that the CPI is discontinued for any reason, the parties shall use such other index, or comparable statistics, on the cost of medical care services in the United States, as shall be computed and published by any agency of the United States or, if no such index is published by any agency of the United States, by a responsible financial periodical of recognized authority.
- (ii) <u>Inflation Adjustment</u>. Beginning on the first January 1 occurring after the Effective Date, and every year thereafter, the Operating Fee shall each be adjusted for inflation as follows:
- (1) The then existing Operating Fee shall be multiplied by the greater of (i) the CPI percentage increase using the latest published data since the last adjustment or (ii) five percent (5%) ("CPI Increase");
- (2) The then existing Operating Fee shall then be added to the CPI Increase ("Net Adjusted Operating Fee"); and
- (3) The Net Adjusted Operating Fee will then be multiplied by 1.01 to determine the Operating Fee for the next ensuing calendar year.
- (4) For example, the latest published CPI in January 2015 (e.g. November 2014) will be compared to the CPI for November 2013 (assuming that was the latest available published data) and the 2014 Operating Fee will be multiplied by the percentage difference. Assuming a three percent increase, the Operating Fee of \$225,000 would be increased by \$6,750 for a new monthly Net Adjusted Operating Fee of \$231,750. That amount would then be multiplied by 1.01 resulting in a new monthly Operating Fee of \$234,067.50.

- (c) Expenses. Except as otherwise provided in this Agreement, all of the costs and expenses, including Operating Expenses, (whether operating or capital) of maintaining and operating the Hospital and other Clinics and Other Facilities and their respective facilities and the Operations shall be the sole cost and expense of the District, and shall not be an expense of HCCA. Expenses shall be paid by HCCA from revenues arising from the Operations and to the extent same are insufficient, the District shall fund same in accordance with Section 2(g).
- (d) <u>Late Payments</u>. If payment of amounts due hereunder, including the Operating Fee, Operating Expenses, other expenses, employee compensation and reimbursement of other amounts, are not made on the due date then interest shall accrue on any unpaid amounts for each day beyond the due date at a rate equal to the lesser of: (a) one percent (1.0%) per month or (b) the maximum non-usurious interest rate allowable by Law.
- (e) <u>Senior Indebtedness Status</u>. The obligations of the District under this Agreement rank and shall rank at least senior in priority of payment to all other unsecured debt of the District. Fund transfers and other payments received by the District shall be directed, regardless of the payment purpose indicated in the payment document, according to the following priority ranking: (1) payment of the Bonds; (2) payment of the Operating Fee and other amounts due hereunder and (3) all other debts of the District.
- (f) <u>Setoff.</u> Notwithstanding any provision of this Agreement to the contrary, HCCA shall have the right from time to time to setoff any amounts owed by the District to HCCA against any amounts owed by HCCA to the District and/or from any funds of the District over which HCCA has a Power of Attorney or right of disbursement (including the Charitable Care and Operational Support Fund), whether pursuant to this Agreement or otherwise.

20. Books and Records.

- (a) <u>Maintenance of Books and Records</u>. HCCA shall supervise the maintenance of the books of account covering the operation of the Hospital and the Clinics and Other Facilities. Such books of account shall be maintained on an accrual basis in accordance with GAAP.
- (b) <u>Reports and Financial Statements</u>. HCCA shall from time to time deliver to the Governing Body, from the District's data related to the Operations, the reports and financial statements reasonably requested by the Governing Body.
- (c) <u>Inspection of Records</u>. Authorized agents of the District shall have the right at all reasonable times during usual business hours, at the District's expense, to audit, examine and make copies of or extracts from the books of account maintained by HCCA with respect to the Operations. Such right may be exercised through any agent, independent public accountant or employee of the District designated by the District.

21. Confidentiality.

(a) <u>Confidentiality</u>. The parties agree that: (a) neither party will disclose any secrets or confidential technology, proprietary information, or trade secrets of the other party without the prior written consent of the transmitting party, except (i) to the receiving party's agents, advisors, auditors and representatives; or (ii) as may be necessary by reason of legal, accounting or regulatory requirements beyond the reasonable control of the recipient party; and

- (b) should this Agreement expire or terminate, neither party will take or retain any papers, records, files, computer programs and software, other documents or copies thereof, or other confidential information of any kind belonging to the other party, except for copies of same as may be reasonably necessary to defend any anticipated litigation or respond to claims or pursuant to ordinary data backup or storage processes.
- (b) <u>Press Release</u>. Except as required by Law, it is understood that all press releases or other public communications of any sort relating to the negotiation, execution and/or operation of this Agreement, and the method of the release for publication thereof, will be subject to the prior written approval of HCCA.

22. Long Term Joint Operating Agreement.

- (a) Attached hereto as Exhibit F is the form of Joint Operating Agreement (the "Long Term Operating Agreement") that the parties have executed and shall become effective, upon written notification from HCCA to the District after: (i) all Bonds which require compliance with Rev. Proc. 97-13 (or any successor regulatory requirement thereto containing similar limitations), have been repaid or otherwise defeased or the Internal Revenue Code limitations or that the conditions to the proposed transaction set forth in the Long Term Operating Agreement have been waived by the Bond trustee(s); (ii) any required notices to the Attorney General regarding the transaction, if any, have been provided, including any that may be required pursuant to Cal. Code Regs., tit. 11, § 999.40; and (iii) any required approvals from the Attorney General with respect to the charitable care assumption by HCCA have been received, if any. The District shall use its reasonable commercial efforts to repay or defease the Bonds or obtain the Bond Trustee's consent as soon as reasonably practicable following the Effective Date. The District shall fully cooperate with HCCA's efforts to obtain the consent of the Attorney General, and the District shall promptly make such requests and take such actions as HCCA shall request to obtain the Attorney General's consent.
- (b) The District agrees that HCCA shall have the right to determine and direct the strategy and process by which the District and HCCA effectuate the Long Term Operating Agreement. HCCA shall have the right to take the lead in all meetings and communications with the Bond trustee(s) and / or any other party whose consent is required to effectuate the Long Term Operating Agreement, including by determining the appropriate timing of any such meeting or communications (including the timing of the submission of any filing with, or the response to any request by, any consent party or any action to be taken pursuant to this Section).
- (c) The District shall: (a) promptly give all notices which either party deems necessary, proper or advisable to the Bond trustee(s) and other applicable third parties which may be necessary or deemed desirable by HCCA in connection with effectuating the Long Term Operating Agreement and the consummation of the transactions contemplated thereby; (b) use its best efforts to obtain all Bond trustee and other approvals, consents, permits, authorizations, and orders necessary, proper or deemed desirable by HCCA in connection with effectuating the Long Term Operating Agreement and the consummation of the transactions contemplated thereby; (c) Permit HCCA to review in advance, and consult with HCCA on, any proposed filling, submission or communication (whether verbal or written) by the District or its Affiliates, and (d) give HCCA the opportunity to attend and participate at any meeting with the Bond trustee(s) or any other party's representatives that are necessary, proper or advisable to effectuate the Long Term Operating Agreement. The District and its accountants, and attorneys shall cooperate fully with HCCA in the preparation of any statements or applications made by HCCA to the Bond

trustee(s) and other applicable parties whose consent is required to effectuate the Long Term Operating Agreement and the transactions contemplated thereby and to furnish HCCA with all information concerning the District necessary or deemed desirable by HCCA for inclusion in such statements and applications, including, without limitation, all requisite financial statements and schedules.

(d) Between the date hereof and the effective dates of the Long Term Operating Agreement, the District shall promptly notify HCCA of (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Long Term Operating Agreement becoming effective, (ii) any notice or communication from the Bond trustee(s) or any other party from whom consent is required, and (iii) any action or proceeding commenced or, to the knowledge of the District, threatened against HCCA and/or the District which relates to the consummation of the transactions proposed under the Operating Agreements.

23. Miscellaneous.

- (a) <u>Additional Assurances</u>. The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, at the request of a party, the other party or parties shall execute such additional instruments and take such additional actions as the requesting party may deem necessary to effectuate this Agreement.
- (b) <u>Complete Agreement</u>. This Agreement constitutes the entire agreement between the parties with respect to the operation of the Hospital and the Clinics and Other Facilities and supersedes any and all prior agreements, either oral or written, between the parties with respect thereto.
- (c) <u>Consequential Damages</u>. Except as expressly provided herein to the contrary, neither party shall be liable under this Agreement for consequential damages, incidental damages, indirect damages, or special damages or for loss of profit, loss of business opportunity or loss of income. Notwithstanding anything to the contrary contained in this Agreement, the parties hereto acknowledge and agree that the terms and provisions of this <u>Section 23(c)</u> shall not limit, alter, modify, impair, or otherwise affect any of the remedies of HCCA set forth in this Agreement, including the right to be paid the Termination Fee.
- (d) <u>Limitation of Liability</u>. Notwithstanding any provision in this Agreement to the contrary, under no circumstances shall HCCA or any HCCA Party have any personal liability for any failure to perform any obligations arising out of or in connection with this Agreement or for any breach of the terms or conditions of this Agreement (whether written or implied). No personal judgment shall lie against HCCA or any HCCA Party and any judgments so rendered shall not give rise to any right of execution or levy against any of their assets. Any judgments rendered against HCCA shall be satisfied solely out of the assets of HCCA. The foregoing provisions are not intended to relieve HCCA from the performance of any of HCCA's obligations under this Agreement, but only to limit the personal liability of HCCA and HCCA Parties in case of recovery of a judgment against any of them.
- (e) <u>Binding Agreement</u>. This Agreement and the rights and obligations of the parties hereunder are binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

- (f) Governing Law. This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed, and governed by and in accordance with, the Laws of the State. The parties agree that the exclusive jurisdiction and venue of all actions claims, or other legal proceedings arising in any manner pursuant to this Agreement, shall be vested in the Superior Court of the County of Los Angeles in the State and in no other. Notwithstanding any other provisions contained in any other document executed simultaneously herewith, each party, for itself, and all successors, assigns, heirs, executors, or future parties at interest agree and accept the jurisdiction of these courts and waive any defense of personal jurisdiction, forum non conveniens, venue or similar defenses and irrevocably agree to be bound by any judgment-rendered in the aforementioned Court; exclusive of any and all other Federal or state courts.
- (g) <u>Headings</u>. The section and subsection headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the Agreement.
- (h) Notices. Except as otherwise expressly permitted herein, all notices required or permitted to be given hereunder shall be in writing (whether or not written notice is specified herein) and shall be personally delivered, or mailed by United States mail, postage prepaid, registered or certified, return receipt requested, or sent by a nationally recognized overnight delivery service, or sent by electronic transmission system. Unless such information is changed by written notice given by the affected party, any such notices shall be sent to the following addresses:

If to HCCA: HealthCare Co

HealthCare Conglomerate Associates Attention: Benny Benzeevi, M.D. 810 North Cherry Street Tulare. CA 93274

Email: benny@Healthcca.com

With a copy to:
Bruce R. Greene, Esq.
Baker Hostetler LLP
11601 Wilshire Blvd. Suite 1400
Los Angeles, CA 90025
Email: bgreene@bakerlaw.com

If to the District: Tulare Regional Medical Center Attention: Chair of the Board 869 North Cherry Street Tulare, CA 93274

Email: sbell@tulareregional.org

With a copy to:
Dooley, Herr, Pedersen & Berglund Bailey
Attention: Kris Pedersen
100 Willow Plaza, Suite 300
Visalia, CA 93291
Email: kpedersen@dhlaw.net

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All notices sent by personal delivery shall be effective and deemed served upon receipt thereof. All notices sent by mail shall be effective and deemed served three (3) calendar days after being deposited in the United States mail. All notices sent by overnight delivery service shall be effective and deemed served when delivered by such overnight delivery service. All notices sent by electronic transmission system shall be effective and deemed served on the day of transmission, if on a business day and during business hours (9am until 5pm, PT) or otherwise on the next business day thereafter.

- (i) <u>Survival of Representations</u>. All of the representations and warranties, and those covenants and agreements contained in this Agreement which are stated to survive termination or expiration of this Agreement, shall survive the expiration or the termination, for any reason of this Agreement. No performance or execution of this Agreement, in whole or in part, by any party hereto, no course of dealing between the parties hereto or any delay or failure on the part of any party in exercising any rights hereunder or at Law or in equity, and no investigation by any party hereto, shall operate as a waiver of rights of such party, except to the extent expressly waived in writing by such party.
- (j) <u>Counterparts</u>. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Signatures transmitted by facsimile or e-mail or other digital means shall be accepted as original signatures.

(k) Severability.

- (i) Each and every provision of this Agreement is severable, and the invalidity of one or more of such provisions shall not, in any way, affect the validity of this Agreement or any other provisions hereof. If any clause or provision of this Agreement is illegal, invalid or unenforceable, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.
- The parties hereby have made all reasonable efforts to ensure this Agreement represents and memorializes the complete and final agreement between the parties hereto, and that it complies with all applicable Law. In the event there is a change in Law, or the interpretations thereof, whether by statute, regulation, agency or judicial decision, or otherwise, that has any material effect on any term of this Agreement, or in the event that a party's reputable counsel (being counsel with at least ten (10) years' experience in health care Law) determines that any term of this Agreement poses a material risk of violating any Law, then the applicable term(s) of this Agreement shall be subject to renegotiation and either party may request renegotiation of the affected term or terms of this Agreement, upon written notice to the other party, to remedy such condition. In the interim, the parties shall perform their obligations hereunder in full compliance with applicable Law. The parties expressly recognize that upon request for renegotiation, each party has a duty and obligation to the other only to renegotiate the affected term(s) in good faith and, further, the parties expressly agree that their consent to proposals submitted by the other party during renegotiation efforts shall not be unreasonably withheld or delayed. The parties further expressly recognize that in any such renegotiation, the relative economics to each of the parties shall be preserved. Should the parties be unable to renegotiate the term or terms so affected so as to bring it/them into compliance with Law or the

interpretation thereof within sixty (60) days of the date on which written notice of a desire renegotiation is given, then either party shall be entitled, after the expiration of said sixty (60) day period, to terminate this Agreement upon sixty (60) additional days' notice to the other party, provided that such party has received an opinion of reputable legal counsel, which legal counsel and opinion are reasonably acceptable to the other party, that it is more likely than not that this Agreement violates applicable Law. If this Agreement is terminated pursuant to this Section 23(k), HCCA shall be entitled to receive payment of the Termination Fee.

(I) <u>Cumulative Rights and Remedies</u>. Any right, power or remedy provided under this Agreement or any party hereto shall be cumulative and in addition to any other right, power or remedy provided under this Agreement or existing in Law or in equity, including, without limitation, the remedies of injunctive relief and specific performance.

(m) Modification and Waiver.

- (i) This Agreement may only be amended by a writing signed by both parties.
- (ii) No failure by any party to insist upon strict compliance with any term of this Agreement, to exercise any option, enforce any right, or seek any remedy upon any default of any other party shall affect, or constitute a waiver of, the first party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default; nor shall any custom or practice of the parties at variance with any provision of this Agreement affect or constitute a waiver of, any party's right to demand strict compliance with all provisions of this Agreement.
- (n) Attorneys' Fees. If any action at law (or in any arbitration proceeding required hereunder) is brought to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief, as determined by the applicable court or arbitrator. The foregoing includes reasonable attorney's fees in connection with any bankruptcy proceeding (including relief from stay litigation), and in connection with any appeals.
- (o) <u>Binding Effect</u>. This Agreement has been duly executed by the parties hereto and constitutes a valid and binding obligation enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar Laws affecting the rights of creditors generally, and except as enforceability may be subject to general principles of equity.
- (p) <u>Independent Contractor Status</u>. Notwithstanding any provision contained herein to the contrary, each party understands and agrees that the parties hereto intend to act and perform as independent contractors. Therefore, the District is not an employee or partner of HCCA. Nothing in this Agreement shall be construed as placing the District in a relationship of employer-employee or partners with HCCA. The parties shall not have the right to make any promises, warranties or representations, or to assume or create any obligations, on behalf of the other party except as otherwise expressly provided herein or as otherwise agreed to in writing. The District and HCCA agree to be solely and entirely responsible for their respective acts and for the acts of any of their respective employees and agents, except as otherwise expressly provided herein.

- (q) Ambiguities and Uncertainties. This Agreement and any ambiguities or uncertainties herein, or the documents referenced herein, shall be equally and fairly interpreted and construed without reference to the identity of the party or parties preparing this Agreement or any of the documents referred to herein, on the express understanding and agreement that the parties participated equally in the negotiation of the Agreement and the documents referred to herein, or have had equal opportunity to do so. Accordingly, the parties hereby waive the benefit of California Civil Code section 1654 and any successor or amended statute providing that in cases of uncertainty, language or a contract should be interpreted most strongly against the party who caused the uncertainty to exist.
- (r) <u>Consents, Approvals and Discretion</u>. Except as herein expressly provided to the contrary, whenever this Agreement requires any consent or approval to be given by any party or any party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld, conditioned or delayed and such discretion shall be reasonably exercised, except as otherwise provided herein. If no response to a consent or request from HCCA to the District for approval is provided to HCCA within ten (10) days from the receipt by the District of the request, then the consent or approval of the District shall be deemed to have been given.
- (s) Expiration of Time Periods. In the event that any date specified herein is, or that any period specified herein expires on, a Saturday, a Sunday, or a state or federal holiday, then such date or the expiration date of such period, as the case may be, will be extended to the next succeeding business day. A business day is a day on which banks are required to be open for business in Los Angeles County, California. All references in this Agreement to "days" are to calendar days, unless business days are so indicated.
- (t) <u>Force Majeure</u>. Except with respect to payment obligations, neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service deemed resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions beyond the reasonable control of either party. However, both parties shall make good faith efforts to perform under this Agreement in the event of any such circumstances.
- (u) <u>No Third-Party Beneficiaries</u>. The rights, privileges, benefits, and obligations arising under or created by this Agreement are intended to apply to and shall only apply to the parties and to no other Persons, except as otherwise provided herein.

[Signatures on next page]

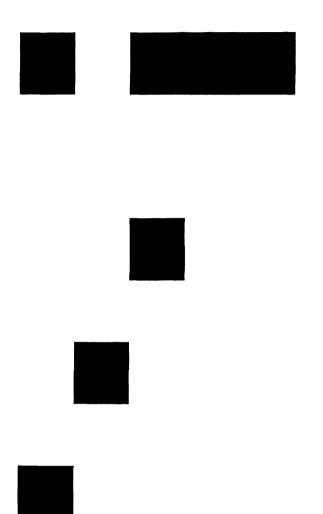


EXHIBIT A HOSPITAL

869 N Cherry St, Tulare, CA 93274

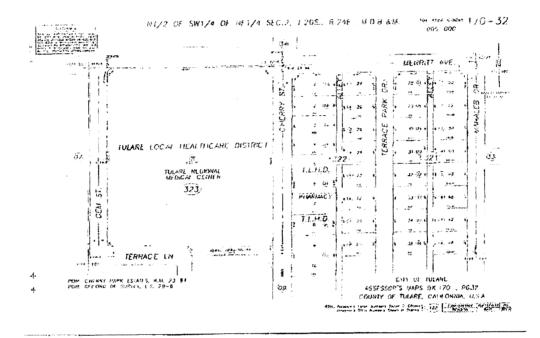
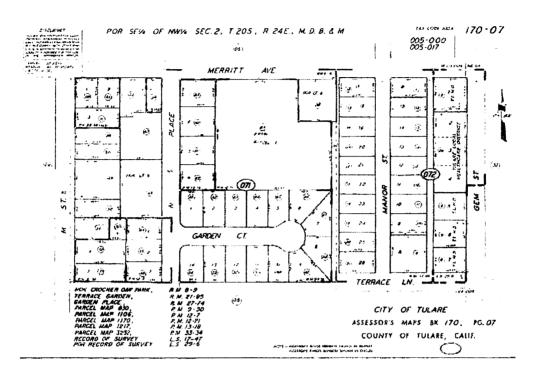


Exhibit A

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The parties acknowledge that the foregoing description and maps do not represent all of the real property associated with the Hospital which is owned by the District. The District hereby grants HCCA the right to amend and/or supplement this exhibit to properly describe the real estate associated with the Hospital, from time to time.

EXHIBIT B CLINICS AND OTHER FACILITIES

Evolutions Fitness & Wellness 1425 E. Prosperity Avenue Tulare CA

Family X-Ray Center 880 E. Merritt Ave Tulare, CA 93274

Hillman Healthcare Center - 1062 South K Street Tulare, CA. 93274

Kingsburg Healthcare Center - 1200 Smith Street Kingsburg, CA. 93631

Lindsay Healthcare Center - 845 N Sequoia Ave Lindsay, CA. 93247

West Street Healthcare Center - 325 N West Street Tulare, CA. 93274

Woodville Healthcare Center - 16796 Ave 168 Woodville, CA. 93257

Allied Services Center
Tulare Regional Medical Center Clinical Laboratory
Allied Services Building
869 N. Cherry
Tulare, CA 93274

Tulare Regional Laboratory - Alternate Collection Site 799 Cherry Street Tulare, CA 93274

Mineral King Toxicology Laboratory 880 E. Merritt, Suite 107 Tulare, CA 93274

Retail Pharmacy
Tulare District Hospital Pharmacy
869 N Cherry St
Tulare, CA 93274

Together with such other facilities and clinics as are owned, leased or otherwise operated by District that HCCA elects to operate hereunder, by notice to District from time to time.

Exhibit B

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EXHIBIT C CONTRACTS

Contracts shall include all Contracts that relate to the Operations as of the Effective Date. HCCA shall supplement this Exhibit within thirty (30) days following the Effective Date.

Exhibit C

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EXHIBIT D ASSUMED CONTRACTS

HCCA shall provide the information for this Exhibit within thirty (30) days following the Effective Date.

Exhibit D

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EXHIBIT E CHARITABLE POLICIES OF THE HOSPITAL

The District's Charity policy as in effect on May 1, 2014. The Charity Policy shall include the foregoing Charity Policy together with any changes thereto as mutually agreed to by the parties prior to the Effective Date pursuant to the terms of the MSA.

Exhibit E

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TULARE LOCAL HEALTH CARE DISTRICT dba TULARE REGIONAL MEDICAL CENTER

POLICY / GUIDELINE

TO:

All Departments

FROM:

Administration

SUBJECT: Financial Assistance (Charity Care) Program

PURPOSE:

The mission of Tulare Regional Medical Center California is to provide safe, efficient, technologically advanced healthcare with the respect for the diversity of our region. Assembly Bill 774 (AB 774) became effective January 1, 2007. The law mandates that as a condition of obtaining or holding an acute care hospital license, Hospitals must limit bills to the uninsured with family incomes at or below 350% of the Federal Poverty Level (FPL) and individuals with high cost medical bills compared to their family income. Bills are limited to the higher of the government reimbursement rates for comparable health services. This policy complies with the requirements of AB 774.

PROCEDURE:

Who is financially eligible?

Non-Insured Patients:

- 1. No third party insurance
- 2. No Medicare/Medi-Cal
- 3. No Workers Compensation
- 4. No Auto Insurance (medical portion for third party liability)
- 5. Family income at or below 350% of Federal Poverty Level (FPL)

Insured Patients with Patient Responsibility:

- 1. Family income at or below 350% FPL
- 2. Financial assistance is available for patients whose out of pocket expenses exceed 10% of family income in the prior 12 month period.
- 3. Special consideration may be made for patients with out of pocket expenses less than 10% of family income in the prior 12 month period.

Effective Date: 07/26/12

(11)Fiscal & Business

APPROVED:

Patient Accounting:

Board Of Directors: 07/25/12

Financial Assistance (Charity Care)

Program 11-3028

TULARE LOCAL HEALTH CARE DISTRICT dba TULARE REGIONAL MEDICAL CENTER

POLICY/GUIDELINE MANUAL

- Eligibility for financial assistance will be considered for all patients who meet the above criteria. The granting of financial assistance shall be based on an individualized determination of financial need and shall not take into account age, gender, race, socioeconomic or immigrant status, sexual orientation, or religious affiliation.
- 2. Tulare Regional Medical Center recognizes that there may be unusual or extenuating financial circumstances which may exceed the specific criteria as established in this policy and warrant special consideration. In such cases, a description of the unusual circumstances should be forwarded by Hospital staff to the Director of Patient Access / or designee for review and then forward to the Chief Financial Officer who will make the final determination as to the amount, if any, of financial assistance allowance to be granted.
- 3. Tulare Regional Medical Center recognizes that the financial status of patients may change over time. Hospital personnel will actively assist families in securing eligibility for any program with the cooperation of patients and their families. Services for dates of service prior to discharge date of January 1, 2007 are not considered under this policy.
- 4. The Director of Patient Access /or designee will review all applications to determine eligibility for financial assistance. Reasonable efforts will be made to verify financial data. All financial information provided will be considered confidential and staff will respect each circumstance with dignity.
- 5. The Director of Patient Access or designee will use the following table to determine the amount of financial assistance. This schedule will be maintained and updated annually by the Patient Access Director or designee.

Federal Poverty Level	Charity Care Allowance [write off]	
	Inpatient	Outpatient
a. Less than 200%	100%	100%
b. 201-250%	90%	95%
c. 251-300%	80%	90%
d. 301 - 350%	75%	87%

- e. Any other type of discount not adhering to the above schedule is not considered a Financial Assistance Discount and will follow the terms and conditions set forth in the Discount Policy.
- f. In all cases Tulare Regional Medical Center will not collect more than the average reimbursement of its government payers which includes but is not limited to Medicare, Medi-Cal, and Healthy Family Programs.
- 6. Patient guarantors must complete a financial assistance application, be in process with an eligibility application for a government sponsored insurance program or set

Effective Date: 07/26/12 Page 2 of 5 #11-3028

TULARE LOCAL HEALTH CARE DISTRICT dba TULARE REGIONAL MEDICAL CENTER

POLICY/GUIDELINE MANUAL

up a payment plan within 150 days of service or the account will be assigned to a third party billing agency at full billed charges upon 150 days after initial billing.

- 7. Written notification of determination of eligibility or non-eligibility for financial assistance will be forwarded to the applicant by the Director of Patient Access / or designee, within 30 days of receipt of the Financial Profile.
- 8. Patients or guarantors have the right to appeal a non-eligible decision within 30 days of the denial letter. Appeals will be forwarded to the Director of Patient Access / or designee who will decide to uphold or overturn the original decision within 15 days.
- 9. An emergency physician as defined in AB 774, Section 127450, who provides emergency medical services in a hospital that provides emergency care is also required by to provide discounts to uninsured patients or patients with high medical costs who are at or below 350% of the federal poverty level.
- 10. Tulare Regional Medical will comply with OSHPD reporting requirements including the following information:
 - a. Submission of charity care and discount policies
 - b. Submission of eligibility procedures for charity care and discount payment
 - c. Submission of review procedures for charity care and discount payment
 - d. Submission of the application used for charity care and discount payment

Charity Care Qualifications & Calculations

- 1. Financial obligations not eligible for consideration are those whose injury is a compensable injury for the purposes of workers' compensation or auto insurance. Further, not all services are eligible for charity care. Elective services are not eligible. Special consideration may be made by the Director of Patient Access for designee. Chief Financial Officer, or Chief Executive Officer.
- 2. A patient may qualify for financial assistance prior to admission, after admission, or after discharge. Written price estimates are available prior to service for inpatient and outpatient services with the exception of emergency services. Every attempt will be made to identify all available funding sources prior to or at time of visit. If a funding source cannot be identified after full compliance by the patient or guarantor, financial assistance will be considered. The hospital contact information for financial assistance is listed on the Financial Assistance application.
- 3. A financial assistance application, provided by TRMC Hospital staff, must be completed with the assistance of a Financial Counselor or by completing, signing and returning it to Tulare Regional Medical Center Admitting Department. This document must be completed within 30 60 calendar days from date of discharge. The application shall remain valid for services rendered within a 180 day period or upon a new admission to the hospital. The financial assessment will include a

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TULARE LOCAL HEALTH CARE DISTRICT dba TULARE REGIONAL MEDICAL CENTER

POLICY/GUIDELINE MANUAL

review of the family's gross income, number of family members, outstanding balances of the medical bills, and assets when appropriate. Copies of prior year tax return (preferred documentation) or current pay stubs will be needed to verify income information. Other documents proving status of assets may be required. The information contained in the financial application will not be used in collection efforts.

- 4. For purposes of determining family size, the following guidelines will be used.
 - a. For patients 18 years of age and older, patient's family includes spouse, domestic partner and dependent children under 21 years of age whether living at home or not.
 - b. For patients under 18 years of age, patient's family includes parents, caretaker relatives and other children under 21 years of age of the parent or caretaker relative.
- 5. Financial assistance information is available from Tulare Regional Medical Center through various means, including the publication of notices in patient bills and by posting notices in high volume areas such as the Emergency Department, Clinics, Admitting, and other places as Tulare Regional Medical Center may elect. Such information shall be provided in English and Spanish, and will be translated for patients/guarantors who speak other languages.
- 6. Any patient account recommended for partial or total financial assistance, after meeting the guidelines set forth in this policy, requires the Director of Patient Access / or designee to prepare all the patient documentation. The following approval process applies:
 - a. \$0-\$25,000- Patient Access Director
 - b. Over \$25,001- Chief Financial Officer
- 7. Tulare Regional Medical Center will assign any financial obligation to a debt collector after 150 calendar days from date of discharge of non-payment of an established payment plan or 30 calendar days of non-payment on an account where the patient guarantor is not in process with an eligibility application for a government sponsored insurance program or is attempting in good faith to settle an outstanding bill.
- 8. Interest or finance charges will not be added to any account that has been approved for Financial Assistance.
- 9. The financial assistance policy shall also include an extended payment plan to allow payment of the discounted price over time. The hospital and patient will negotiate terms of the payment plan. If the patient fails to make payments for a period of 90 days, the payment plan will be considered inoperative and TRMC will inform the patient via phone call and written correspondence that the payment plan has terminated and the account may be forwarded to collections.

Effective Date: 07/26/12

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#11-3028

TULARE LOCAL HEALTH CARE DISTRICT dba TULARE REGIONAL MEDICAL CENTER

POLICY/GUIDELINE MANUAL

- 10. In the course of debt collection involving low-income uninsured patients who are at or below 350% of the Federal Poverty Level, Tulare Regional Medical Center will follow all guidelines established by AB 774. This provision will not preclude Tulare Regional Medical Center from pursuing reimbursement from third party liability settlements.
- 11. A patient deemed homeless will qualify for presumptive eligibility. To be deemed homeless, the individual must not have a fixed, regular, and adequate nighttime residence or has a primary nighttime residence that is a supervisor publicly or privately operated shelter.
- 12. All documentation will be maintained by Patient Access Services in accordance with regulatory guidelines.
- 13. Tulare Regional Medical Center Home Care and Retail Pharmacy will use best efforts to follow the hospital's approved charity care policy. Separate or additional applications to be completed by the patient/family will not be required. Referral will be made to use the Hospital's financial information.
- 14. This policy does not apply to professional services provided to Hospital patients by physicians or other medical providers including but not limited to Radiology, Anesthesiology, Pathology other than Emergency Room services as required by AB774, Section 127450.

Questions concerning any aspect of this policy/guideline should be referred to Patient Access or Administration.

This policy/guideline replaces and supersedes all previous policies/guidelines concerning this matter and is effective immediately.

Effective Date: 07/26/12 Page 5 of 5 #11-3028

Descriptive Name:

Financial Assistance (Charity Care) Program

Descriptive Type:

New Policy

Document Number:

11-3028

Attachments:

None

Author:

Karan Levering, Director, Patient Access (First Source) in

conjunction with the Chief Financial Officer, TRMC

Typist:

Karan Levering

Creation Date:

04/15/12

Prev. Dist. Date:

None

Committee Review and Approval:	Approval Date:	Comments:
Board of Directors	07/25/12	

Effective Date:

07/26/12

Forward To:

Policy Binders - (PBX and Administration) and Post to

Intranet Site

Disposition:

Copy and Distribution - Administration

Comments:

Policy replaces 11-1002 Charity Care Program

EXHIBIT F LONG TERM OPERATING AGREEMENT

See attached

Exhibit F

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EXHIBIT C

JOINT OPERATING AGREEMENT

[Attached]

Exhibit C

603545537.7

Interim Joint Operating Agreement between

HealthCare Conglomerate Associates, LLC and

Tulare Regional Medical Center

MAY 29, 2014

INTERIM JOINT OPERATING AGREEMENT

This INTERIM JOINT OPERATING AGREEMENT ("Agreement") is made and entered into on MAY 2014 to be effective upon the termination of the MSA, as defined below, ("Effective Date"), by and between HealthCare Conglomerate Associates, LLC, a California limited liability company ("HCCA"), and Tulare Local Healthcare District, d/b/a Tulare Regional Medical Center ("District").

RECITALS:

WHEREAS, the District is the owner of the real property identified on <u>Exhibit A</u> hereto together with the Buildings thereon, and certain equipment, supplies and fixtures associated therewith on which it operates an acute care hospital facility, known as Tulare Regional Medical Center, located in Tulare, California (the "<u>Hospital</u>");

WHEREAS, the District is the owner or tenant of certain other real property, including, without limitation, the Buildings thereon, and the Clinics and Other Facilities, together with certain equipment, supplies and fixtures associated therewith;

WHEREAS, the parties, have previously entered into that certain Management Services Agreement, of even date herewith (the "MSA") which sets forth the terms and conditions pursuant to which HCCA provides certain management services to the District, and which contemplates the execution of this Agreement.

WHEREAS, the District has determined that it is in the best interests of the residents of the District that the operation of the Hospital and the Clinics and Other Facilities be delegated to HCCA, and that such delegation will best serve the interest of the District;

WHEREAS, HCCA and the District wish to enter into this Agreement for the purpose of forming an interim joint venture for the operation of the Hospital and the Clinics and Other Facilities in order to assure consistent high quality health care services are provided efficiently and to reduce the District's financial risk in providing those services;

WHEREAS, the District believes that this Agreement is necessary for the provision of adequate health services to the communities served by the District and that this arrangement constitutes a new method of providing adequate health care to the communities served by the District, as contemplated by <u>California Health and Safety Code</u> § 32126.5.

WHEREAS, the parties acknowledge that in today's healthcare environment, HCCA will need the flexibility to respond appropriately in conducting the Operations;

WHEREAS, the District shall act as an advocate for the community in its relations with HCCA; and $\frac{1}{2}$

WHEREAS, under the Laws of the State, including, without limitation, <u>California Health and Safety Code</u> § 32121(o) and § 32126.5, the District and HCCA each is authorized to enter into and perform this joint venture arrangement and each has been duly authorized to do so by resolutions adopted by the Governing Body and by the manager of HCCA.

NOW, THEREFORE, for and in consideration of the premises and the mutual undertakings and representations herein contained and for other good and valuable consideration, the receipt and

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sufficiency of which are hereby acknowledged, the parties hereto, intending to become legally bound, hereby agree as follows:

AGREEMENT

1. Definitions.

All capitalized terms not defined elsewhere in this Agreement shall have the following meanings, unless a different meaning clearly appears from the context:

- (a) "Affiliate" means any other firm, partnership, association, corporation, joint venture or public body, directly or indirectly controlling or controlled by, or under direct or indirect common control with, the District or HCCA. The term "control," when used with respect to a particular Person, means the possession, directly or indirectly, of the power to direct or cause the direction of management in the policies of such Person whether through the ownership of voting stock, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.
 - (b) "Annual Budget" shall have the meaning set forth in Section 4(i)(i).
- (c) "Assumed Contracts" means those contracts which HCCA elects or has previously elected, in its sole and absolute discretion, to assume, pursuant to the provisions of Section 3(a)(x).
- (d) "Bonds" means the \$15,700,000 Refunding Revenue Bonds, series 2007, the \$8,595,000 General Obligation Bonds (2005 Election), Series B-1, 2009 and the \$61,405,000 General Obligation Bonds (2005 Election), Series B-2, 2009 or any other bonds hereafter issued by the District with the consent of HCCA.
- (e) "Buildings" means those buildings and other structures in which the Operations now or hereafter are conducted, together with such other buildings and structures now or hereafter owned, leased or otherwise operated by the District that HCCA elects, in its sole and absolute discretion, to operate hereunder, by notice to the District from time to time.
 - (f) "CIA" shall have the meaning set forth in Section 18(a).
 - (g) "Claims" shall have the meaning set forth in Section 2(f)(x)(iv).
- (h) "Clinics and Other Facilities" means those facilities and businesses identified on Exhibit B to this Agreement, together with such other facilities and clinics owned, leased or otherwise operated by District that HCCA elects, in its sole and absolute discretion, to operate hereunder, by notice to District from time to time.
 - (i) "Compliance Plan" shall have the meaning set forth in Section 18(a).
 - (j) "Consultants" shall have the meaning set forth in Section 4(j).
- (k) "Contracts" means all service, supply, maintenance, and utility agreements, all leases, and all other contracts, agreements, arrangements, and obligations relating to the Operations, whether oral or written, all of which are described in Exhibit C to this Agreement. True, correct, and complete copies of all of the written Contracts (including all

amendments thereto), in existence on the Effective Date, will be delivered to HCCA and detailed descriptions of all of the oral Contracts, in existence on the Effective Date, will also be delivered to HCCA.

- (I) "CPI" shall have the meaning set forth in Section 6(e)(ii)(1).
- (m) "CPI Increase" shall have the meaning set forth in Section 6(e)(ii)(1).
- (n) "District Default" shall have the meaning set forth in Section 6(d).
- (o) "<u>District Service Area</u>" means the geographic boundaries of the District established under applicable Law, as currently in effect and as hereafter amended.
 - (p) "Emergent Expenses" shall have the meaning set forth in Section 4(i)(ii).
- (q) "<u>GAAP</u>" means United States generally accepted accounting principles and practices as in effect from time-to-time, as applied by HCCA.
 - (r) "Governing Body" means the Board of Directors of the District.
- (s) "Governmental Authority" means any federal, State or local judicial, executive or legislative body or governmental municipality, department, commission board, agency or authority including government contractors for federal health programs, and including without limitation, the State of California Health and Human Services Agency Office of Statewide Health Planning and Development.
 - (t) "HCCA Default" shall have the meaning set forth in Section 6(f).
- (u) "<u>HCCA Parties</u>" means HCCA and its Affiliates, and their respective officers, directors, managers, employees, agents, contractors and representatives.
- (v) "HCCA Property" means any machinery, inventory, equipment, fixtures, hardware and software, or other personal property (tangible and intangible) associated with Operations that HCCA has constructed, installed or otherwise acquired, at its expense.
- (w) "Hospital" shall have the meaning set forth in the Recitals of this Agreement.
 - (x) "Hospital Law" means California Health and Safety Code §32000 et seq.
 - (y) "Ineligible Person" shall have the meaning set forth in Section 18(d).
 - (z) "Jeopardy Events" shall have the meaning set forth in Section 6(g)(ii).
- (aa) "Law" means any constitutional provision, statute, ordinance, or other law, rule, regulation, interpretation, judgment, decree or order of any Governmental Authority or any settlement agreement or compliance agreement with any Governmental Authority, including Hospital Law.
 - (bb) "Major Decisions" has the meaning set forth in Section 2(d).
 - (cc) "Medical Staff" shall have the meaning set forth in Section 4(d)(i).

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- (dd) "OIG" shall mean the Office of Inspector General of the Department of Health and Human Services.
- (ee) "Operating Expenses" means all costs and expenses paid or incurred in connection with the Operations, determined in accordance with sound accounting and management practices, including without limitation, utilities, insurance, taxes, supplies, cost of Permits, salaries and other compensation due to employees or payable to third party consultants (including legal and accounting expenses) contractors, maintenance and repair of the Hospital or the Clinics and Other Facilities, including janitorial, security, elevator, painting, plumbing, electrical, carpentry, window washing, signage, landscaping, parking lot maintenance and waste disposal, including disposal of bio hazardous medical waste generated in Operations in accordance with applicable Law.
- (ff) "Operations" means the healthcare and other operations and programs which are conducted at the Hospital and the Clinics and Other Facilities, as the same may be modified by HCCA from time to time during the Term.
- (gg) "Permits" means all permits, licenses, registrations, orders, consents, certificates, accreditations, authorizations, waivers and approvals of any Governmental Authority.
- (hh) "Person" means an association, a corporation, a limited liability company, an individual, a partnership (general or limited), a trust, a hospital district organized under the Hospital Law, or any other entity or organization, including a Governmental Authority.
 - (ii) "Preexisting Claims" shall have the meaning set forth in Section 2(f)(x)(r).
 - (jj) "Project" shall have the meaning set forth in Section 2(f)(i).
 - (kk) "State" means the State of California.
- (II) "Substantial Part of the Hospital or the Clinics and Other Facilities" means the portion of such facilities, as HCCA, in its sole and absolute discretion, shall determine which would prevent or materially interfere with the use of any of the Hospital or the Clinics and Other Facilities for the purposes set forth herein.
 - (mm) "Term" has the meaning set forth in Section 6.
 - (nn) "Termination Fee" shall have the meaning set forth in Section 6(e)(i).

2. General Responsibilities of the Parties.

(a) Appointment. The District hereby appoints HCCA and HCCA hereby accepts such appointment from the District, subject at all times to the terms and provisions herein, as the sole and exclusive agent to operate the Hospital and the Clinics and Other Facilities and to provide the day-to-day and strategic management of the foregoing. HCCA shall have the general responsibility and authority to implement all aspects of the Operations in accordance with HCCA's policies and procedures, in such manner as HCCA shall determine in its sole and absolute discretion, subject to Section 2(d). The parties intend that HCCA will operate and retain full control over the Hospital and the Clinics and Other Facilities and shall make all decisions and is hereby authorized to take any action of any kind and to do anything

and everything it deems necessary, in its sole and absolute discretion, in connection with the Operations, except as provided in <u>Subsection 2(d)(i)(3)</u>. Nothing in this Agreement shall be construed to create any fiduciary duty owed by either party to the other party or any of their respective Affiliates.

- (b) Ownership of Assets. The District will continue to retain ownership of the real and personal property (including the intangible property) of the Hospital and the Clinics and Other Facilities but subject to HCCA's right and authority to make use of such property for the purposes of this Agreement, as set forth in Section 3(a). This Agreement is not intended to: (i) be a lease, does not create any landlord/tenant relationship between the District and HCCA, and is not intended to convey or constitute an estate or interest in the real property of District or (ii) result in the transfer of the District's facilities from District ownership, as prohibited under California Health and Safety Code §32121(r). It is intended that this Agreement shall constitute a license.
- (c) Representations of the District. The District represents to HCCA as follows:
- (i) The execution and delivery of this Agreement by the District and the consummation by the District of the transactions contemplated hereby do not nor will they, after the giving of notice, or the lapse of time, or otherwise (i) violate any judgment, order, injunction, decree, regulation or ruling of any court or authority actually known to the District, or (ii) conflict with, result in a breach of, or constitute a default under any Bond, note or other evidence of indebtedness, any mortgage, or other material Contract or instrument to which the District is a party or by which the District is bound.
- (ii) Except for applicable consents described herein, no approval, consent or authorization of, filing or registration with or giving of notice to, any Governmental Authority or any other Person, including any Bond trustee, is required for the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby.

(d) Certain Rights and Obligations of the District.

- (i) During the term hereof, the District shall do or cause all things to be done reasonably necessary to preserve, renew and keep in full force and effect its legal existence under the Law of the State. In addition, the District shall participate in the following matters ("Major Decisions"):
- (1) Changes to the charity care policy of the Hospital that would result in a material change to the overall number of eligible participants in the charity care programs;
- (2) Changes in clinical or operational policies and procedures for District programs which would significantly and materially limit the scope of services provided at the Hospital:
- (3) In addition, while the District and HCCA believe that, as a result of the delegation of management duties hereunder, the Governing Body is not required to: (i) make and enforce all rules, regulations and bylaws necessary for the administration, government, protection and maintenance of the Hospital and the Clinics and Other Facilities and

the property belonging thereto or (ii) prescribe the terms upon which patients may be admitted thereto, as referenced in California Health and Safety Code § 32125(a). Notwithstanding the foregoing, in the event that it is determined that the Governing Body must continue to directly fulfill the duties set forth under <u>California Health and Safety Code</u> § 32125(a), then the Governing Body shall have the right, in consultation with HCCA, to: (i) make and enforce all rules, regulations and bylaws necessary for the administration, government, protection and maintenance of health care facilities under their management and all property belonging thereto; (ii) prescribe the terms upon which patients may be admitted to the Hospital; and (iii) establish and maintain minimum standards of operation, as prescribed under Division 23, Chapter 2, Article 2 of the California Health and Safety Code. In the event that the parties disagree as to the applicability of California Health and Safety Code § 32125(a), the District shall be required to bring a declaratory judgment action in a court in the venue set forth in <u>Section 23(f)</u> to determine the applicability of California Health and Safety Code § 32125(a) and the scope of the required management rights to be vested in the District hereunder; and

In connection with the participation by the District in Major Decisions, the parties shall use their good faith efforts to resolve any disagreements by consensus. HCCA shall give consideration to the views, positions and recommendations of the District. However, final decisions shall be made by HCCA, in its sole and absolute discretion, except as provided in <u>Subsection 2(d)(i)(3)</u>. For the avoidance of doubt, the decision-making authority of the District with respect to the virtual joint venture formed hereunder is intended to be limited and advisory in nature, except as provided in <u>Subsection 2(d)(i)(3)</u>. Except as otherwise expressly required by applicable Law (including as provided in <u>Subsection 2(d)(i)(3)</u>), the District shall not have any rights to vote or decide any matters related to the Operations or otherwise; and

- (4) Matters pertaining to the Project (as defined herein) as described more fully in Section 2(f).
- (e) <u>Liaisons.</u> Each party shall appoint one senior executive who possesses a general understanding of the issues related to the joint venture collaboration contemplated by this Agreement to act as its respective liaison for this relationship. The liaisons as of the date hereof shall be:

District: Chairman

HCCA: It's Manager

A party may replace its respective liaison at any time upon notice to the other party. Any liaison may designate a substitute to temporarily perform the functions of that liaison. Each liaison shall be charged with creating and maintaining a collaborative relationship. Each liaison will also be responsible for:

- (i) coordinating the relevant functional representatives of the parties, in developing and executing strategies and plans hereunder;
- (ii) providing a single point of communication both internally within the respective party's organizations and together regarding key strategy and plan issues; and
- (iii) identifying and raising cross-party and/or cross-function disputes to the party's respective senior leadership team in a timely manner.

Upon the reasonable request of either party's liaison, and with reasonable notice, each party's liaison, as well as appropriate additional personnel involved in the performance of this Agreement, shall meet at a location mutually agreed to by the parties to discuss issues related to this Agreement.

(f) Construction Project Advice.

- (i) HCCA shall provide the District with advice and recommendations regarding the current Hospital construction project (involving the construction of a new tower commonly referred to as the Tower No. 1 Expansion Project (the "Project")) and will assist the District in its coordination of the Project. HCCA shall not be a contractor on the Project and shall not have control over, charge of or responsibility for, the means, methods techniques, sequences, procedures, or for the safety precautions and programs related to such Project. HCCA shall not have control over or be responsible for the District's architects or contractors or their agents, nor shall HCCA be deemed to be responsible for the construction of the Project, directly or indirectly or the funding of such Project.
- (ii) HCCA shall provide consultation and advice, and shall assist the District in the District's efforts to discharge all of the field operations requirements and responsibilities of the District as the owner of the Project as required under the construction contracts between the District and its contractors (the "Contract Documents") and to cause the District's contractors to perform the work required to construct the Project in accordance with the Contract Documents. In this regard, HCCA shall provide recommendations to the District to assist in its evaluation of the status of the on-going construction associated with the Project; HCCA shall provide on-site administration of the Contract Documents in cooperation with the Project architect. HCCA shall provide assistance, including administrative, management and related services, to coordinate scheduled activities and responsibilities of the contractors, and HCCA shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Project work.
- (iii) HCCA shall endeavor to obtain satisfactory performance from the District's contractors, but shall have no liability for any failure of performance by any of such contractors. HCCA shall have no liability for any design defect or other matter which is the responsibility of the Project architect. HCCA shall recommend courses of action to the District when requirements of the Contract Documents are not being fulfilled. HCCA shall report to the District any defects or deficiencies in the work of any contractor or their agents or employees, or any other Person performing construction on or providing materials or equipment to the Project of which HCCA obtains actual knowledge. Notwithstanding the foregoing, HCCA shall have no obligation to investigate or take active steps to determine the existence of any such defects or deficiencies, nor shall HCCA be liable, for any failure to timely communicate any such defect or deficiency to the District. HCCA may recommend the rejection of any deficient or defective work to the District, if such work does not conform to the Contract Documents; however, the failure of HCCA to recommend rejection of any such work shall not constitute HCCA's approval or acceptance of the work.
- (iv) HCCA shall review requests for changes in the construction contracts, assist in negotiating contractors' proposals, and provide recommendations to the Project architect and the District in connection therewith.
- (v) HCCA shall monitor and evaluate actual costs for the construction work, and estimates for uncompleted work, and shall advise the District as to variances between

actual and budgeted or estimated costs. HCCA shall notify the District if there are any apparent inconsistencies or inaccuracies in the information presented by the District's contractors. HCCA shall also report the contractors' cost control information to the District.

- (vi) HCCA shall assist the District in developing and implementing procedures for the review and processing of applications for payment from the contractors for progress and final payments.
- (vii) HCCA shall record the progress of the Project. On a monthly basis or otherwise as requested by the District, HCCA shall submit written or oral progress reports to the District and attend monthly Governing Body meetings requested by the District.
- (viii) HCCA shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work of any contractors.
- (ix) Project Consultants. HCCA shall make recommendations if it determines that consultants are reasonably required for the Project, and shall assist the District in selecting and engaging such Consultants. HCCA shall supervise and coordinate Project Consultants.

(x) Limitations.

- (1) HCCA has no authority to execute any Contract Documents or otherwise bind the District to any transactions with respect to the Project. HCCA shall not provide any legal services or architectural services with respect to the Project. The District agrees that although HCCA will make recommendations, HCCA shall not take any action in connection with the implementation of such recommendations without the District's prior approval.
- (2) The District will at all times maintain a meaningful and substantial involvement in all phases of the Project, and hereby accepts responsibility for the results of the Project. HCCA's recommendations concerning the terms of the Construction Contracts shall be subject to review and approval of the District and the District's attorneys or other advisers.
- (3) The District acknowledges that HCCA does not guarantee any particular results, notwithstanding projections which may be made by HCCA. HCCA's projections and forward looking statements are based on estimates and expectations, and reasonably available data from contractors, architects and others, and as a result are inherently uncertain. Actual results could differ materially from those anticipated as a result of a variety of factors.
- (4) Neither HCCA nor HCCA Parties shall be liable to the District for any claims, demands, costs, expenses, liabilities or obligations of any nature relating to the Project, ("Claims"), except to the extent resulting from the willful misconduct of HCCA or HCCA Parties. HCCA and HCCA Parties may be liable to the District for general and direct damages, but in no event shall HCCA or any HCCA Parties be liable to the District for any consequential damages, including loss of use, special, indirect or incidental damages. HCCA and HCCA Parties may be liable for punitive or exemplary damages to the extent resulting from their willful misconduct.

- (5) The District shall defend, indemnify and hold HCCA and HCCA Parties free and harmless from and against all Claims (including reasonable attorney's fees), except to the extent resulting from the willful misconduct of HCCA or HCCA Parties. It is understood and agreed that, HCCA and HCCA Parties shall have no liability whatsoever for any actions or failure to act which arose prior to the Effective Date, including Claims which relate in any way to construction activities which occurred prior to that date ("Pre-existing Claims"). In the event that any Claims are made against HCCA or any HCCA Party which may include Pre-existing Claims, then the indemnification and defense obligations of the District shall apply, even if they also involve Claims which are not Pre-existing Claims. However, in the event of a determination by a court or arbitrator that any Claims for which indemnification was provided by the District were not in fact Pre-Existing Claims and were not Claims for which indemnification is otherwise required hereunder, then HCCA shall be liable to reimburse the District for any reasonable costs or expenses incurred by the District in connection with the defense or indemnification.
- (6) In circumstances where any limitation on damages or indemnification provision hereunder is unenforceable or unavailable for any reason, the District shall contribute to any Claims, relating to the Services provided hereunder by HCCA, in such proportion proportional to the relative fault of the parties bears to all other conduct giving rise to such Claim.
- (7) Neither HCCA nor any HCCA Parties, or any of their respective Affiliates, shall have any liability hereunder to the District, and the District agrees it will not bring any action against any such Persons, except to the extent caused by the willful misconduct of such Persons. Without limiting the foregoing, such Affiliates are intended third-party beneficiaries of these terms and may in their own right enforce such terms.
- (8) The provisions of Section 2(f)(x)(4)-(7) shall survive the expiration or termination of this Agreement.
- (g) Funds. If HCCA shall determine that sufficient funds are not available from the Operations and amounts deposited with HCCA as provided in Section 2(h), the District shall furnish HCCA with timely and sufficient funds to timely pay the Operating Expenses, both operating and non-operating expenses. HCCA will notify the District by submitting a fund request to the District and the District will supply the requested funds within three (3) calendar days of HCCA's notification of the District of the need for same, provided that for unanticipated Emergent Expenses, HCCA shall have the right to provide a shorter notice period. HCCA shall not be obliged to fund Operating Expenses or other expenses hereunder or provide funds to accommodate shortfalls in revenue, except where an expense is specifically and expressly allocated to HCCA herein. Notwithstanding the foregoing, HCCA, may, in its sole and absolute discretion, advance funds as provided in Section 2(g)(i). HCCA shall not be in default hereunder if HCCA's failure to comply with the terms of this Agreement is due to the lack of adequate funds provided by the District.
- (i) Notwithstanding anything in this Agreement to the contrary, in the event the District fails to timely advance funds as required hereunder and/or meet any of its payment obligations under this Agreement, HCCA shall have the right, but not the obligation, in its sole and absolute discretion, to advance funds or agree to undertake to advance funds to any Person, as a loan to the District to meet the shortfall caused by the District's failure. All sums advanced by HCCA pursuant to such agreements or undertakings shall be for the District's account. The District shall pay HCCA interest on all advanced funds at the rate set

forth in <u>Section 19(d)</u> and the principal, upon demand by HCCA. Any advance made shall be evidenced by a promissory note issued by the District in an amount equal to the amount advanced.

- (ii) To the extent HCCA advances funds, this Agreement constitutes a security agreement pursuant to which the District provides HCCA with a lien on all of the District's Assets (as defined herein), to the extent allowed by Law, and HCCA shall have the right to file a Uniform Commercial Code financing statement with respect to such obligation without the signature of the District.
- (iii) HCCA shall have the right to execute the above described promissory note on behalf of the District, to the extent permitted by Law. The District hereby irrevocably appoints HCCA as its attorney-in-fact coupled with an interest with full power to prepare and execute any documents, instruments and agreements, including, but not limited to, any note evidencing the advance or loan and any Uniform Commercial Code financing statements, continuation statements and other security instruments as may be appropriate to perfect and continue its security interest in favor of HCCA.

(h) Charitable Care and Operational Support Fund.

- (i) The District recognizes that the continued operation of the Hospital and Clinics and Other Facilities in accordance with the District's historical role as the primary provider of healthcare for the indigent and uninsured populations of Tulare County, California, precludes operation of the Hospital and Clinics and Other Facilities for the provision of high quality healthcare without support from sources other than patient revenues, especially in light of increasing indigent and charity populations and adverse reimbursement changes. The District has determined that in light of the increasing healthcare costs it is in the best interest of the District to subsidize the cost of providing healthcare services for the indigent and uninsured populations of Tulare County, California and surrounding areas through the arrangement set forth herein and that the provision of sufficient funds for such care is essential.
- (ii) Except for funds required to be held by the District to support principal and interest on the Bonds and such other amounts as may be required to satisfy covenants under the Bonds, that all funds derived from the District's regular annual tax and assessments shall be conveyed by the District to HCCA, on not less than a monthly basis, to be held by HCCA (the "Charitable Care and Operational Support Fund") to use to pay expenses incurred in connection with the operation and maintenance of the Hospital and the Clinics and Other Facilities in accordance with the provisions hereof, including the cost of providing charitable care, as provided herein. Notwithstanding the foregoing, the balance contained in the Charitable Care and Operational Support Fund shall not exceed the sum of ten percent (10%) of the estimated annual expenditures related to the Hospital and the Clinics and Other Facilities, if disbursements would otherwise require a written order of the District's President and Secretary, as provided under applicable Law.
- (iii) Upon termination of this Agreement, any amounts remaining in the Charitable Care and Operational Support Fund shall be: (i) transferred to the Subsidy Fund established under the Long Term Operating Agreement, if the parties hereto enter into such agreement or (ii) returned to the District by HCCA.
- (iv) The District shall use its reasonable commercial efforts to (i) obtain the consent of any Bond trustees required to effectuate and fund the foregoing Charitable

Care and Operational Support Fund arrangement as soon as reasonably practicable and (ii) reasonably minimize the amount of funds required to be held by the District to support principal and interest on the Bonds and such other amounts as may be required to satisfy covenants under the Bonds.

- (v) HCCA shall provide the District with a quarterly statement of the charitable care provided, including such care provided with funds from the Charitable Care and Operational Support Fund.
- (vi) HCCA shall have, to the fullest extent allowed by Law, the right to withdraw funds from the Charitable Care and Operational Support Fund, as it deems necessary or advantageous, for the operation of the Hospital and Clinics and Other Facilities and the provision of healthcare services, including amounts for capital expenditures.
- (vii) The District shall assure that its funds are used to support the Hospital and the Clinics and Other Facilities and to provide charitable care therein and are not diverted to other uses.

(i) Cooperation and Responsiveness.

- (i) The District and its Governing Body shall fully and timely cooperate with HCCA and shall be responsive and available to HCCA during the Term in order that HCCA can carry out its duties and obligations hereunder.
- (ii) In any instance in which the District (or the Governing Body) has an obligation to provide input or decide an issue, or provide (or withhold) its approval or consent under the terms of this Agreement, the District (or the Governing Body) shall do so in accordance with <u>Section 23(r)</u>. Unless a specific period of time is set forth for a particular act, a reasonable period of time for the District to provide input or decide an issue, or provide (or withhold) its approval or consent shall generally be within five (5) to seven (7) days.
- (iii) In addition to the obligation to provide funds to HCCA, the District will timely provide HCCA with the necessary equipment and other resources to enable HCCA to fully and timely perform its services hereunder.

(j) Relationship.

- (i) Except as specifically authorized hereunder, the District shall not interfere, directly or indirectly, with HCCA's decisions or the daily Operations, and shall not interfere with HCCA's ability to perform its obligations hereunder. The District representatives shall not access the Hospital and the Clinics and Other Facilities, except: (i) upon prior arrangement with HCCA, (ii) in the event of emergency; or (iii) as may be required pursuant to Subsection 2(d)(i)(3). Except upon request of HCCA, individual members of the District's Governing Body, shall not issue directions to HCCA, except following and in accordance with the formal actions of the District's Governing Body.
- (ii) The District representatives' communications, formal and informal, regarding HCCA and the Operations with Persons associated or affiliated with the Operations or HCCA, shall be conducted exclusively with Persons designated by HCCA's manager or chief executive officer.

- Neither the District nor its representatives shall (nor cause or encourage others to) disclose confidential or negative information regarding, or take any action or omit to take any action that is materially detrimental to the reputation of (anything which might tend to bring a party into public disrepute, hatred, contempt, scorn, scandal, or ridicule, or which might tend to reflect unfavorably on or otherwise degrade such party), HCCA or any of the other HCCA Parties, or make any statements, verbally, in writing or otherwise, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of HCCA, or of the other HCCA Parties, to anyone other than HCCA's manager or chief executive officer. Notwithstanding the foregoing, negative information may be discussed within official District Governing Body meetings and in connection with its internal operations, provided that if such information is used in a non-confidential forum, the District shall use reasonable efforts to verify the veracity and objectivity of such information prior to disclosing same in a non-confidential forum. However, nothing herein shall prevent the District or any of its representatives from testifying truthfully in a legal proceeding or governmental administrative proceeding. The District acknowledges and agrees that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to, the news media, bondholders, industry analysts, competitors, strategic partners, vendors, employees (past and present), and clients.
- (iv) The parties acknowledge that: (1) this Section is a material provision of this Agreement; (2) any breach of this Section shall be a material breach of this Agreement, and (3) a breach of this Section would cause irreparable harm.
- Standards of Performance. The District acknowledges that while HCCA shall expend its commercially reasonable efforts in performing its obligations under this Agreement, HCCA does not guarantee any particular results, notwithstanding projections which may be made by HCCA. HCCA's projections and forward looking statements are based on estimates and expectations, and reasonably available competitive, financial, economic and other data, and as a result are inherently uncertain. Actual results could differ materially from those anticipated as a result of a variety of factors. HCCA shall use its commercially reasonable judgment in directing the Operations. The parties acknowledge that implementation of the District's charitable care purposes may not permit the maximization of the District's profits. The District is a California Health Care District organized and operating under the Hospital Law with, inter, alia., a charitable mission, and it has under the Hospital Law certain responsibilities and obligations, including, but not limited to, obligations to provide charity care and indigent care. At all times, HCCA, shall, as required by Law, follow the charity and indigent care policies and obligations of the District (provided that the Hospital and the Clinics and Other Facilities' financial obligations in that regard shall not be materially changed unless such change is required by applicable Law) and shall assist the District in meeting all of the District's required obligations under the Hospital Law. The District will promptly notify HCCA of any changes to any policy, procedure, or the District Bylaw which may impact the Hospital and the Clinics and Other Facilities' charity care obligations.

3. Virtual Joint Venture Economic Participation.

(a) <u>District Contribution.</u> On the Effective Date, the District shall convey to HCCA (or cause to be conveyed) to the virtual joint venture the exclusive right to use, during the Term, all of its assets (whether real or personal property, or tangible or intangible property), constituting and associated with the Hospital and the Clinics and Other Facilities, together with all other assets of the District as HCCA shall designate, provided that the foregoing shall not constitute a grant to HCCA of a proprietary or ownership interest in any of such assets. In

furtherance of the foregoing, on the Effective Date, the District shall convey to HCCA (or cause to be conveyed) the exclusive right to use the following assets:

- (i) all inventory and supplies, including, but not limited to, office, foodstuffs, medical, disposables, linens, prescription medications and pharmaceutical inventories and supplies and other inventories and supplies of every kind and nature used in connection with the Operations:
- (ii) all policies and procedures manuals, operating manuals, training materials, marketing, sales and promotional materials, intellectual property including, but not limited to, all patents, trademarks, service marks, copyrights (whether or not registered) and registrations and applications therefore, trade names, trade secrets, confidential know-how and similar proprietary information, and/or computer software owned by the District;
- (iii) all administrative records, financial books and records, employee records, including, but not limited to, all books, records, files, computer software, data or databases, correspondence, memoranda, notes and other documents or papers and other evidence thereof relating to the Operations;
- (iv) all patient medical records, medical staff records and medical/administrative libraries;
- (v) copies of all other books and records of or relating to the Operations;
- (vi) all Permits (including, but not limited to, any Life Safety Code or similar waivers, variances and any certificates of need), relating to the Operations;
 - (vii) goodwill;
 - (viii) all vehicles used in the Operations;
- (ix) the District's rights and interests in and to its provider number and provider and reimbursement agreement under the Medicaid/Medicare programs, managed care contracts, insurance contracts and any other third party payor programs, but only to the extent that the same are assignable to HCCA to use during the Term, but only to the extent that HCCA accepts such right to use such arrangements;
- (x) all of the District's rights and interests in all Contracts set forth on Exhibit D to this Agreement (the "Assumed Contracts"). Notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute an agreement to assign any Contract or any claim, right or benefit arising thereunder or resulting therefrom, if a consent has not been obtained or if an attempted assignment thereof would be ineffective. If any such consent has not been obtained as of the Effective Date, or if an attempted assignment of any such Contract would be ineffective, (a) the District shall so advise HCCA and (b) the District shall reasonably cooperate with HCCA to obtain such consent, and absent obtaining such consent, in making commercially reasonable arrangements designed to provide to HCCA the benefits under such Contracts, including enforcement for the benefit of HCCA of any and all rights of the District against a third party arising out of any breach or cancellation by such third party or otherwise. Fees, expenses and payments under all Assumed Contracts shall be pro-

rated as of the Effective Date. Expenses under the Assumed Contracts shall be paid as provided in Section 19(c).

- (b) <u>Satisfaction of Bond Obligations</u>. At its sole cost and expense, the District shall do all things necessary, desirable, and appropriate to pay or, otherwise satisfy the indebtedness related to the Hospital and the Clinics and Other Facilities, including the indebtedness related to the Project construction. Notwithstanding the foregoing, HCCA shall provide oversight of the District's funds and shall assist the District in making timely payments of its liabilities, including the Bonds and other obligations. It is specifically agreed and understood, however, that HCCA's obligations under this subsection are to assist in transmitting payments, subject to availability of District funds to make such payments. Nothing contained herein shall obligate HCCA to make any such payments from its own funds or resources or to advance any monies whatsoever to the District. However, HCCA shall have the right to pay such amounts, in its discretion, from the Charitable Care and Operational Support Fund. Further, HCCA shall not be liable either primarily or as guarantor for debts of the District as a result of HCCA's services hereunder.
- (c) HCCA Contribution. HCCA may, in its sole and absolute discretion, but shall not be required to, contribute working capital to the joint venture created hereunder, as same may be needed for the Operations, from time to time, and management resources to the joint venture created hereunder and provide all of the operational and strategic planning for the joint venture created hereunder.
- (d) <u>Economic Distribution</u>. During the Term, the District shall receive the net income resulting from the Operations in accordance with the following:
- (i) The annual net operating income from the Hospital and the Clinics and Other Facilities (calculated in accordance with GAAP) shall be determined for each fiscal year on a combined basis, and then allocated to the District after subtracting HCCA's fees set forth herein, including all expense reimbursement and the Operating Fee described in Section 19.
- (ii) If any losses are incurred in the operation of the Hospital and the Clinics and Other Facilities, such losses shall be the sole responsibility of the District.
- (iii) Distributions of allocated net income to the District shall be made when funds are reasonably available to do so, after considering the capital and operating needs of the Hospital and the Clinics and Other Facilities, including reasonable reserves determined in the sole and absolute discretion of HCCA.
- (iv) "True-up" payments shall be made between the parties, as may be necessary to reflect the proper allocation of income.
- (e) Proration of Expenses and Revenues. All expenses and revenues shall be prorated between the District and the virtual joint venture with HCCA acting as the joint venture's agent, as of the Effective Date. All prorations shall be made on the basis of actual days elapsed in the relevant accounting, billing or revenue period and shall be based on the most recent information available. "True-up" payments shall be made between the parties, as may be necessary to reflect the actual amount of any expense or revenue previously allocated between the parties based upon incomplete or inaccurate information or an estimate. The

parties shall each make such records available for inspection by the other party as are reasonable to demonstrate the accuracy of any prorations and adjustments.

4. HCCA'S Operational Covenants.

- (a) Licensure. During the Term, HCCA shall: (i) maintain, in its name, in full force and effect, all necessary Permits required by applicable Law for the Operations; (ii) the Hospital and the Clinics and Other Facilities which are engaged in the Operations will be certified to participate in the Medicare program under Title XVIII of the Social Security Act and the Medi-Cal program, California's Medicaid program; (iii) HCCA will provide to the District copies of any Permits related to the Operations upon request; and (iv) HCCA will promptly notify the District of any change, relinquishment, revocation or suspension of, or the imposition of any material restriction to, any Permits.
- (b) <u>Mission, Vision, Values and Policies</u>. HCCA will conduct the Operations in compliance with HCCA's mission, vision, values and ethical policies and will operate under HCCA's clinical and administrative policies, systems, and procedures and standards, as they may be amended, except as may otherwise be required by <u>Subsection 2(d)(i)(3)</u>. The District enters into this Agreement with HCCA after having determined that HCCA's mission, vision, values, and ethical policies are consistent with the mission and purposes of the District to provide access to high quality health services to the public in the District Service Area and access to specialized services to District residents.
- (c) <u>Decision-making</u>. HCCA may make all decisions regarding the Operations, in its sole and absolute discretion, recognizing that HCCA requires the flexibility, in its sole and absolute discretion, to determine how to deliver high quality healthcare services while maintaining financially sustainable Operations, except as provided in <u>Subsection 2(d)(i)(3)</u>.

(d) Medical Staff.

- (i) A separate medical staff (the "Medical Staff") will be maintained at the Hospital with credentialing services provided by HCCA. HCCA shall adopt Medical Staff Bylaws for the Operations effective on the Effective Date, and shall credential, appoint and grant Medical Staff privileges and membership status to physicians and other health care professionals, as is appropriate for the Hospital and the Clinics and Other Facilities in HCCA's sole and absolute discretion, except as provided in Subsection 2(d)(i)(3). HCCA shall be the governing body that approves the Medical Staff Bylaws, rules and regulations. Nothing herein restricts HCCA's ability to amend the Medical Staff Bylaws as it deems necessary and appropriate in its sole and absolute discretion, except as provided in Subsection 2(d)(i)(3).
- (ii) The District shall provide HCCA with a confidential written disclosure containing a brief description of all adverse actions taken against Medical Staff members of applicants in the past three (3) years that are not disclosed in the minutes of the meetings of the Medical Executive Committee of the Medical Staff.
- (e) <u>Management and Governance</u>. HCCA shall set strategic direction and provide strategic and operational planning for the Operations. HCCA shall have overall governance authority and responsibility for the Hospital and the Clinics and Other Facilities, except as provided in <u>Subsection 2(d)(i)(3)</u>. HCCA will establish and select members of a community board to provide advice regarding the Operations, in its sole and absolute discretion. A majority of the members of the community board shall reside in the District and the initial

search committee for members of this community board shall include up to two (2) Persons selected by the District.

- (f) <u>Programs</u>. The District shall have the right to: (i) reasonably request information regarding HCCA's performance hereunder, as may be required to satisfy its obligations under applicable Law and the Bonds, (ii) exercise taxing authority sufficient to satisfy debt obligations associated with the Hospital and the Clinics and Other Facilities; (iii) participate in Major Decisions, as provided in <u>Subsection 2(d)(i)</u>, (iv) dispose of surplus District assets (as defined herein) not used by HCCA under this Agreement, and (v) otherwise perform its statutory functions.
- (g) <u>Charity Care</u>. HCCA will apply to the Operations the charity care policies established by HCCA (subject to the District's rights under <u>Subsection 2(d)(i)(1) and (3)</u>), which shall, subject to the financial performance of the Hospital and the Clinics and Other Facilities, generally be consistent with the existing charitable policies of the Hospital, a copy of which is set forth in Exhibit E to this Agreement.
- (h) Records. On the Effective Date, the District will provide HCCA with all patient, medical staff, personnel, and other records of the District necessary for Operations including, without limitation, medical records, billing records, equipment records, operating manuals, employment records and financial data related to Operations and the Hospital and the Clinics and Other Facilities, and HCCA agrees to maintain such records during the Term pursuant to HCCA's policies and procedures. HCCA will provide reasonable access to such records to the District and its agents for preparation of cost reports and other post-closing filing, preparation of the District financial statements relating to the period prior to the Effective Date, defense of investigations and claims, and other reasonable purposes. HCCA will be deemed to have custody but not ownership of such records.

(i) Annual Budget.

- (i) HCCA shall be responsible for preparation, presentation, monitoring, and reporting of the annual operating and capital budgets (collectively, the "Annual Budget"), except as may otherwise be required by <u>Subsection 2(d)(i)(3)</u>. Each proposed Annual Budget shall set forth an estimate of operating revenues and expenses for the next fiscal year, together with an explanation of anticipated changes in utilization, charges to patients and clients, payroll rates and positions, non-wage cost increases, and all other factors differing significantly from the then-current year. HCCA shall be responsible for the oversight and review of the Annual Budgets, except as may otherwise be required by <u>Subsection 2(d)(i)(3)</u>. The Annual Budget will be created and implemented to coincide with District's fiscal year, which is July 1st through June 30th of the following year.
- (ii) Subject to the limitations set forth in Section 2(g), HCCA shall make commercially reasonable efforts to oversee the management of the Hospital and the Clinics and Other Facilities so that the actual revenues, costs, and expenses of the operation and maintenance of the Hospital and the Clinics and Other Facilities shall be consistent with the Annual Budget. Inclusion of any item within the Annual Budget shall constitute all necessary approval for HCCA to effectuate the budgeted item. Notwithstanding anything to the contrary herein, HCCA shall have the right, in its sole and absolute discretion, to make any expenditures necessary on an emergent basis to avoid or mitigate damage to the Hospital and the Clinics and Other Facilities, obtain equipment repairs or to avoid or mitigate injury or potential injury to Persons or property or that are necessary on an emergent basis to comply with any Law or to

cure or prevent any violation of any Law, whether or not provided for or within the amounts provided for in the Annual Budget for the applicable year (collectively, the "Emergent Expenses").

(j) HCCA may hire or retain any consultants, accountants, attorneys or other professional personnel (collectively, "Consultants") which HCCA, in its sole and absolute discretion, determines it is necessary or appropriate to assist HCCA in carrying out its duties and responsibilities under this Agreement. The expense of any Consultants so retained shall be an expense of the District, but HCCA shall retain any such Consultants without the approval of the Governing Body, if the cost of such services shall exceed \$100,000 in any calendar year for such services, unless otherwise set forth in the approved Annual Budget.

5. Fees and Revenues.

Commencing on the Effective Date, HCCA shall have the exclusive right to receive, consistent with the terms of this Agreement, all fees and revenues generated by and payments received from the Operations, including without limitation professional and technical fees for provision of clinical and ancillary services (such as imaging and laboratory) for application to Operating Expenses and other expenses (as provided in <u>Section 19(c)</u>) relating to the Operations, with the balance, if any, remitted to the District as provided in <u>Section 3(d)</u>.

6. Term and Termination.

- (a) <u>Initial Term</u>. The initial term of this Agreement shall commence on the Effective Date and shall end on the date that is fifteen (15) years from and after the Effective Date of the MSA, as set forth therein (such period, plus any renewal Terms, are collectively referred to as the "Term").
- (b) Extension of Term. Upon completion of the initial Term or of any subsequent renewal Term, this Agreement shall automatically renew for additional 10-year periods, unless either party shall send a notice of intent not to renew the Agreement to the other party not less than twelve (12) months prior to the end of the initial Term or then current renewal Term, as applicable. Each renewal Term shall be on the same terms and conditions set forth herein. Notwithstanding the foregoing, nothing herein is intended to permit the Term to exceed such term as is permissible under any tax-exempt bond financing requirements under applicable Law, with respect to the Bonds. In the event the Term exceeds any permissible term, then the Term shall be conformed to the maximum term permitted under such Law.
- (c) Irrevocability of Agreement. The District acknowledges and agrees that HCCA is entering into this Agreement in reliance on the long term nature of this Agreement, and further acknowledges that the rights, duties, powers and authority of each of the parties hereto, are intended to be non-terminable throughout the Term, except in accordance with the express provisions of this Agreement. The District acknowledges that neither party will achieve the benefits intended to be achieved if the District has any continuing right or power to terminate this Agreement, or the relationship hereby created, except in accordance with the express provisions of this Agreement. Accordingly as a substantial inducement to HCCA to enter into this Agreement and provide its proprietary systems and knowledge, the District hereby irrevocably waives and relinquishes any right, power or authority existing at Law or in equity to terminate this Agreement, except in strict accordance with the express provisions of this Agreement. The parties further hereby acknowledge that any breach of this Section will cause irreparable and permanent damage to HCCA, not compensable by money damages.

- (d) <u>District Default</u>. The following occurrences shall each be deemed an event of default by the District ("District Default") unless waived in writing by HCCA:
- (i) Material breach of any representation, warranty, or covenant of the District contained within this Agreement, after giving written notice to the District, and the District's subsequent failure to cure the breach (if such breach is capable of being cured) within sixty (60) days (or ten (10) days in the event of a monetary breach or thirty (30) days in the event of a breach of any provision requiring the District to: (i) provide HCCA with a consent or approval or (ii) execute an agreement or document hereunder); provided, however, that if the cure cannot reasonably be effectuated within the applicable cure period, a longer period shall be allowed not to exceed ninety (90) days, if the District has commenced to cure such breach in good faith or has otherwise provided adequate protection or security to protect HCCA's interest hereunder (which security shall be sufficient in HCCA's sole and absolute discretion) within the applicable cure period, and the District is proceeding with due diligence to effect a cure.
- (ii) The occurrence of any of the following: (a) the filing by the District of a voluntary petition in bankruptcy or for reorganization under any bankruptcy Law, or (b) the filing of a petition for the appointment of a receiver for all or any portion of the property of the District, or (c) the taking of any voluntary or involuntary steps to dissolve or suspend the powers of the District (unless such steps to dissolve or suspend are removed) within thirty (30) days, or (d) the consent by the District to an order for relief under the federal bankruptcy Laws or the failure to vacate such an order for relief within sixty (60) days from and after the date of entry thereof, or (e) the entry of any order, judgment or decree, by any court of competent jurisdiction, on the application of any creditor of the District or any other Person, adjudicating the District as a bankrupt, or to be insolvent, or approving a petition seeking reorganization or the appointment of a receiver, trustee or liquidator of all or a substantial part of the District's assets, if such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days. In the event that the District becomes a debtor under the Bankruptcy Code, the District agrees, to the extent permitted under applicable Law: (a) not to reject this Agreement; (b) to designate this Agreement as a non-executory agreement.
- If HCCA, at any time and in good faith, shall deem itself insecure and for the purposes of this Agreement, HCCA shall be entitled to deem itself insecure when some event occurs, fails to occur or is threatened or some objective condition exists or is threatened which significantly impairs the prospects that any of the obligations of the District hereunder will be paid when due, or which significantly affects the financial or business condition of the District. If HCCA deems itself insecure, it shall have no obligation to continue performing hereunder more than thirty (30) days from and after it notifies the District that it has deemed itself insecure, unless the District provides HCCA with an unconditional, irrevocable letter of credit (the "Letter of Credit") from a U.S. banking institution acceptable to HCCA, insured by a federal insurance agency ("Issuer"). The Letter of Credit shall (i) meet the requirements of the "Uniform Customs and Practice for Documentary Credits," ICC No. 500 (1993 Edition), (ii) name HCCA as beneficiary, (iii) be in an amount equal to the lesser of (A) the Termination Fee or (B) such lesser amount as may be specified by HCCA, in its sole and absolute discretion, (iv) be payable in full or partial draws against HCCA's sight draft, (v) include an "evergreen" provision which provides that the Letter of Credit shall be renewed automatically on an annual basis following its issuance, unless the Issuer delivers thirty (30) days prior written notice of cancellation to HCCA, (vi) have an initial expiration date no earlier than one year from the date of issue, and (vii) otherwise be in form and substance satisfactory to HCCA. In the event the Letter of Credit is ever not renewed when required hereunder, HCCA shall have the right, immediately upon receipt of the notice of cancellation described above, to draw upon the

Letter of Credit and hold the proceeds thereof as a cash security deposit. Provided that the District is not then in default of any of its obligations hereunder and no act, omission, fact, circumstance, condition or event that with the giving of notice or the passage of time or both would constitute a default hereunder exists, HCCA shall return the Letter of Credit to the District within forty-five (45) days after the expiration or termination of this Agreement. If the Letter of Credit is not timely provided, then HCCA shall have the right to immediately terminate this Agreement (with no right on the part of the District to cure same) and receive the Termination Fee.

(e) Liquidated Damages.

- (i) Each of the parties acknowledges that it would be extremely difficult and impracticable, if not impossible, for HCCA to ascertain with any degree of certainty the amount of damages that would be suffered by HCCA in the event of the occurrence of a District Default. In the event this Agreement is terminated as a result of any District Default, or for any other reason other than a termination by HCCA under Section 6(g)(i), or an HCCA Default, the District shall pay a fee (the "Termination Fee"), which fee is not a penalty, but rather is liquidated damages in accordance with California Civil Code Section 1671, which the parties have negotiated in good faith and have agreed is a reasonable fee under the circumstances. The Termination Fee shall be paid within five (5) days after the effective date of the termination of this Agreement.
- (ii) The Termination Fee shall be an amount equal to Eighty Seven Thousand Five Hundred Dollars (\$87,500) per month first increased by CPI, as provided below, and then multiplied by the remaining number of months in the Term (not to exceed 120 months) at the time of the termination, discounted to its present value using the discount rate of the Federal Reserve Bank of San Francisco at the time of termination plus one percent (1%).
- (1) "CPI" means the monthly index of the U.S. City Average Consumer Price Index for Urban Wage Earners and Clerical Workers Medical Care Services (1982-84 equals 100) published by the United States Department of Labor, Bureau of Labor Statistics or any successor agency that shall issue such index. In the event that the CPI is discontinued for any reason, the parties shall use such other index, or comparable statistics, on the cost of medical care services in the United States, as shall be computed and published by any agency of the United States or, if no such index is published by any agency of the United States, by a responsible financial periodical of recognized authority.
- (2) The Termination Fee shall be adjusted for inflation by multiplying the above stated Termination Fee by the CPI percentage increase between January 1, 2015 and the date the Termination Fee is payable, using the latest published data since the last adjustment.
- (iii) Notwithstanding the foregoing, nothing herein is intended to permit the Termination Fee to exceed such amount as is permissible under any tax-exempt financing requirements under applicable Law, with respect to the Bonds. In the event the Termination Fee exceeds any permissible limit upon such fees, then the Termination Fee shall be reduced to the maximum termination or similar fee permitted under such Law, however denominated, and the District shall enter into any agreements necessary to minimize any reduction to the Termination Fee.

- (iv) If the District fails to pay the Termination Fee when due, then the Termination Fee, or any unpaid portion thereof, shall bear interest from the date such payment was required to be made until the date of payment at the interest rate set forth in Section 19(d).
- (v) If upon termination of this Agreement, the District contends that the Termination Fee is not due and owing and HCCA contends that same is due and owing, the District shall be obliged to deposit within three (3) days the amount of the Termination Fee into an Escrow account with a national bank with not less than \$50,000,000,000 in assets. The funds shall be released to the applicable party upon the sooner to occur of: (a) mutual instructions of HCCA and the District; (b) final non-appealable order of a court directing the release of the funds to a party; or (c) to the District if HCCA has not contested, in a judicial proceeding, that the funds are owed to it within twenty four (24) months of the termination.
- (vi) This Section shall survive the expiration or termination of this Agreement.
- (f) <u>HCCA Default</u>. The following occurrences shall each be deemed an event of default by HCCA ("<u>HCCA Default</u>"), unless waived in writing by the District:
- (i) Material breach of any material covenant of HCCA contained within this Agreement, after giving written notice to HCCA, and HCCA's subsequent failure to cure the breach within sixty (60) days provided, however, that if the cure cannot reasonably be effectuated within such sixty (60) day period, a longer period shall be allowed, if HCCA has commenced to cure such breach or has otherwise provided adequate protection or security to protect the District's interest hereunder and HCCA is proceeding to effect a cure. In determining whether a breach has occurred, the District shall exercise its reasonable discretion in good faith and shall use its best efforts to assist HCCA in effectuating a cure.
- (ii) The occurrence of any of the following: (a) the filing by HCCA of a voluntary petition in bankruptcy or for reorganization under any bankruptcy Law, or (b) the filing of a petition for the appointment of a receiver for all or any substantial portion of the property of HCCA, or (c) the taking of any voluntary or involuntary steps to dissolve or suspend the powers of HCCA (unless such steps to dissolve or suspend are removed) within sixty (60) days, or (d) the consent by HCCA to an order for relief under the federal bankruptcy Laws or the failure to vacate such an order for relief within sixty (60) days from and after the date of entry thereof, or (e) the entry of any order, judgment or decree, by any court of competent jurisdiction, on the application of any creditor of HCCA or any other Person, adjudicating HCCA as a bankrupt, or to be insolvent, or approving a petition seeking reorganization or the appointment of a receiver, trustee or liquidator of all or a substantial part of HCCA's assets, if such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days.

(g) Early Termination Events.

- (i) Notwithstanding anything herein to the contrary, during the first thirty-six (36) months after the Effective Date of the MSA, HCCA shall have the option to terminate this Agreement before its expiration, upon not less than six (6) months' notice to the District.
- (ii) In the event either party should be determined by a Governmental Authority to be in violation of any Law, by virtue of this arrangement or this arrangement is otherwise deemed illegal by a Court of competent jurisdiction in a final non-appealable

determination ("Jeopardy Events"), the parties shall use best efforts to negotiate an amendment to this Agreement to remove or negate the Jeopardy Event. If they are unable to do so within six (6) months, either party may terminate this Agreement by notice to the other, provided that upon such termination the District shall be obliged to pay the Termination Fee as provided in Section 6(e).

(iii) In the event that: (A) (i) it shall be determined that the District has the right to: (i) make and enforce all rules, regulations and bylaws necessary for the administration, government, protection and maintenance of the Hospital and the Clinics and Other Health Care Facilities and the property belonging thereto or (ii) prescribe the terms upon which patients may be admitted thereto, as referenced in California Health and Safety Code § 32125(a) and (B) HCCA shall determine in good faith, in its sole and absolute discretion, that the District is exercising or threatening to exercise those rights in a manner that HCCA views as fundamentally inconsistent with HCCA's approach to the management of the Hospital and the Clinics and Other Facilities, then HCCA shall have the right to terminate this Agreement by notice to the District and upon such termination the District shall be obliged to pay the Termination Fee as provided in Section 6(e).

(h) Procedure.

- (i) In the event either party to this Agreement deems the other party to be in default of its obligations hereunder, then said party shall be required to provide notice of the alleged default to the other party, which notice shall contain a detailed description of the alleged default.
- (ii) If the claim of default is disputed by the party receiving such notice, within ten (10) business days thereafter the party receiving the notice shall give notice to the charging party that the party receiving such notice disputes that the factual matters alleged constitute a default under this Agreement. If the parties cannot resolve such dispute within ten (10) business days thereafter (commencing on the date that the charging party receives notice of the dispute) the parties shall submit such matter to binding arbitration in Los Angeles County, California, in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules and Procedure for Arbitration, and applying the Law of the State. Any determination by the arbitrator shall be final and binding upon the parties, and judgment thereon may be entered in any court having jurisdiction thereof. The costs of arbitration shall be borne equally by the parties. During the pendency of any such arbitration and until final judgment thereon has been entered, this Agreement shall not be terminated as a result of the alleged default which is in dispute.

(i) <u>Termination</u>.

- (i) In the event of a party's failure to cure a default within the time allowed herein for curing such default, the non-defaulting party may immediately terminate this Agreement by notice to the defaulting party, whereupon neither of the parties shall have any further obligations under this Agreement, except those obligations that by their terms or nature extend beyond the date of expiration or termination, and the non-defaulting party shall then have all rights and remedies available hereunder and at Law.
- (ii) The parties may mutually agree at any time to terminate this Agreement.

(j) Reconveyance of Use of Assets. Upon termination of this Agreement for any reason, other than entering into the Long Term Operating Agreement, HCCA shall convey to the District all rights of use in and to and possession of any and all of the District's facilities in its possession in order to preclude divesting the District from ownership of its facilities, as prohibited under California Health and Safety Code §32121(r).

7. HCCA Financial Responsibilities.

- (a) HCCA undertakes the following obligations:
- (i) HCCA shall pay, from District Funds (including the Charitable Care and Operational Support Fund) and/or revenues derived from the Operations, all Operating Expenses associated with the Hospital and the Clinics and Other Facilities. If the District fails to timely advance funds to HCCA hereunder, HCCA shall have the right, in its sole and absolute discretion, but not the obligation, to advance such funds, as provided in Section 2(g)(i);
- (ii) The parties believe that the Hospital and the Clinics and Other Facilities will not be subject to State excise taxes or property taxes. In the event, however, that such taxes shall be lawfully assessed against the Hospital or the Clinics and Other Facilities during the Term, HCCA shall pay, from District Funds (including the Charitable Care and Operational Support Fund) and/or revenues derived from the Operations, prior to delinquency all such assessments. The District authorizes HCCA to protest or contest any tax valuations or assessments and shall assist HCCA in assuring that the Hospital and the Clinics and Other Facilities are treated as exempt assets.
- (iii) HCCA shall pay, from District funds (including the Charitable Care and Operational Support Fund) and/or revenues derived from the Operations and perform the obligations arising under the Assumed Contracts. If the District fails to timely advance funds to HCCA hereunder, HCCA shall have the right, in its sole and absolute discretion, but not the obligation, to advance such funds, as provided in Section 2(g)(i);
- (b) Except as set forth above, no further payments or performance shall be due and owing from HCCA to the District or otherwise in connection with Operations.
- (c) HCCA, at its expense, may at any time, install or commence the installation of HCCA Property in the Hospital or the Clinics and Other Facilities, to such extent as HCCA may deem desirable. HCCA may also remove any of HCCA Property so installed by it. HCCA's Property shall remain the property of HCCA unless purchased by the District pursuant to this Section. The District shall have, at its option, the right to purchase HCCA Property as of the termination of this Agreement, for other than the District's Default, for a sum equal to HCCA's cost less ordinary depreciation. HCCA shall have the right to remove all HCCA Property from the Hospital and the Clinics and Other Facilities upon termination of this Agreement, if purchase is not made by the District.

8. Service Covenants.

HCCA shall:

(a) Operate a "24/7" (all hours) emergency department service, which need not be located in the Hospital but meets the requirements of applicable Law from time to time.

- (b) Provide, as required by Law, medical care to patients regardless of patients' ability to pay, subject to the charitable care polices of HCCA;
- (c) Not enact financial admission policies that have the effect of denying essential medical services or treatment solely because of a patient's immediate inability to pay for the services or treatment,, where such treatment is required under applicable Law, including the Emergency Medical Treatment and Active Labor Act (EMTALA);
- (d) Participate in and ensure that admission to and services of Operations are available to the beneficiaries of governmental reimbursement programs (Medicaid / Medicare) without discrimination or preference because they are beneficiaries of those programs:
- (e) Provide reports to the District, including financial information for Operations, together with such information as may be required for the District to report to the community on the progress it is making towards the community's health needs;
- (f) Conduct the Operations without discrimination based on race, color, sex, marilal status, sexual orientation, ethnicity, or national origin; and
- (g) Conduct the Operations, if California Health and Safety Code § 32125(a) is determined to be applicable as provided in <u>Subsection 2(d)(i)(3)</u>, in accordance with: (i) all rules, regulations and bylaws the Governing Body determines are necessary for the administration, government, protection and maintenance of the Hospital and the Clinics and Other Facilities and the property belonging thereto and (ii) the Governing Body's prescribed terms upon which patients may be admitted thereto.

9. Names and Branding.

- (a) <u>License</u>. HCCA shall have the exclusive, nontransferable, royalty free license and right (but not the obligation) to use the names "Tulare Regional Medical Center", "Tulare Hospital" and variations thereof and all other related names, logos, marks of the District which are and have been used by the District in connection with the operation of the Hospital and the Clinics and Other Facilities. The District shall not continue to use such names and logos in connection with the provision of healthcare services, but may use same in connection with its operation of other District non-healthcare programs. Neither party has any obligation to register, defend or preserve such names or marks.
- (b) <u>Signage; Branding.</u> HCCA shall have the right to install signs upon the interior and exterior of the Hospitals and the Clinics and Other Facilities regarding the conduct of its business, subject to compliance with applicable Law. The Operations will be conducted under HCCA's name and in accordance with HCCA's naming and branding standards. Nothing herein licenses the District to use HCCA's names, brands or logos in conducting its business.
- (c) <u>Identification of the District</u>. HCCA will identify in appropriate public locations, websites, and other media, the provision of support to the healthcare Operations by the District.

10. Assignment and Sublicensing.

- (a) HCCA shall not sublicense all or substantially all of the Hospital or the Clinics and Other Facilities, or in any manner assign or transfer its rights and obligations under this Agreement without the prior written consent of the District; provided, however, that HCCA, in its sole and absolute discretion, may sublicense, transfer, assign, or delegate any portion of its rights or obligations under this Agreement to an Affiliate or to another Person that is acquiring all or substantially all of the assets and liabilities of HCCA, including a Person in which HCCA has an ownership interest, directly or indirectly, or with which HCCA may merge, affiliate, acquire or be acquired. Nothing herein prevents HCCA from subcontracting with third parties to perform any of the services required of HCCA hereunder.
- (b) The District may not in any manner assign or transfer its rights under this Agreement without prior written consent of HCCA.
- (c) Any purported assignment in violation of this Section shall be null and void.

11. Exclusivity.

- The District agrees that as a result of this Agreement with HCCA, HCCA has been granted the exclusive right and responsibility to conduct the Operations in the District's facilities, including the Hospital and the Clinics and Other Facilities, during the Term in accordance with the terms of this Agreement. Therefore, during the Term, the District shall not directly or indirectly own, lease, manage, operate, market, or engage in any business, enterprise, or other activity relating to the operation of a hospital, clinic, home health, or medical clinics, or any other activity which is competitive with any activity of HCCA during the Term within the District Service Area other than in accordance with this Agreement; provided that this Section shall not be construed as prohibiting the District from providing: (i) non-healthcare services; (ii) services to respond to an epidemic or other public health emergency or (iii) other services as it may be required by law to provide, that HCCA is not providing or willing to provide. The District further acknowledges and agrees that enforcement of the provisions of this Section would not unduly impact the availability of medical services within the District Service Area, or otherwise pose a threat of harm to the public health. The District further agrees that if the District should engage in a health-care-related activity or any other activity which is prohibited hereunder, in violation of the provisions of this Section 11, then such activity shall constitute a material breach of this Agreement, and shall afford HCCA its full rights of termination.
- (b) During the Term, the District shall not, within the District Service Area, directly or indirectly, operate or invest in the provision of medical or other clinical healthcare services, except with the prior consent of HCCA, unless required to do so under applicable Law. In the event, the District in good faith believes that a need exists for additional health care services or programs not currently provided within the District Service Area, the District shall first bring such recommendations to HCCA which will consider undertaking such services or programs itself. If HCCA elects not to do so, the District may elect to provide such non-clinical healthcare services that are not competitive with services offered by HCCA, itself or to pursue alternate funding sources for operation of the new program. In addition, HCCA may at any time solicit input of the District regarding additional programs and services in the District Service Area.

(c) To the fullest extent allowable by Law, if any provision of this <u>Section 11</u> is held to be invalid or unenforceable, the invalid or unenforceable provision shall be deemed stricken from this Agreement, and the remainder of this <u>Section 11</u> shall nevertheless continue in full force and effect.

12. Employee Matters.

- (a) <u>Employment</u>. As of the Effective Date, the District shall terminate all of its employees at the Hospital and at the Clinics and Other Facilities. HCCA, shall have the right, but not the obligation to offer employment on an at-will basis (or otherwise) and in accordance with HCCA's customary and usual new employee screening policies and procedures to the former employees of the District, or any of them.
- (b) <u>Wages</u>. Each employee that accepts such offer and is hired by HCCA will be employed by HCCA at a base salary and wage as determined by HCCA, in its sole and absolute discretion, and HCCA shall not have any responsibility for any retirement or other benefits accorded to such Person by the District historically, all of which shall remain the liability of the District.
- (c) <u>Employment Decisions</u>. Nothing herein shall be deemed to affect or limit in any way normal management prerogatives of HCCA or its Affiliate with respect to employees or to create or grant to any such employees third party beneficiary rights or claims of any kind or nature, except as provided in <u>Subsection 2(d)(i)(3)</u>. HCCA will have exclusive authority with respect to employment decisions, including length of employment, regarding each employee, and will have the right to change compensation and benefits for all of its employees from time to time as HCCA may deem appropriate. Unless HCCA agrees otherwise in writing, HCCA shall not assume or be responsible for any existing District employment agreements or obligations.
- (d) <u>Seniority</u>. Employees hired by HCCA will not be entitled to retain their current seniority for purposes of benefits (i.e., benefit eligibility or accrual levels for PTO purposes).

13. <u>Insurance and Casualty.</u>

- (a) <u>Insurance</u>. HCCA shall maintain or obtain by purchase or self-insure for all risk property insurance including earthquake insurance covering the Hospital and the Clinics and Other Facilities and HCCA Property in an amount not less than full replacement cost. Such insurance (other than insurance covering HCCA Property) shall name the District as loss payee as its interests may appear. HCCA shall maintain by purchase or self-insurance for liability for operation of any motor vehicle, with limits of not less than \$1,000,000 combined single limit per accident. The cost of such insurance shall be paid as an Operations expense as provided in <u>Section 19(c)</u>.
- (b) <u>Damage</u>. If the Hospital or the Clinics and Other Facilities should be damaged or destroyed by any peril covered by the insurance to be provided by HCCA under <u>Section 13(a)</u>, HCCA shall promptly notify the District of such damage. If any Substantial Part of the Hospital or Clinics and Other Facilities should be destroyed by any peril covered by the insurance to be provided by under <u>Section 13(a)</u>, or if it should be so damaged thereby that rebuilding or repairs cannot be completed within two hundred (200) days after the date of such damage, as determined by HCCA in its sole and absolute discretion, then the Hospital and the Clinics and Other Facilities and other assets shall be re-conveyed back to the District (as

provided in <u>Section 6(i)</u>) and this Agreement shall terminate and be of no further force and effect, provided that HCCA shall be entitled to receive the Termination Fee. If the Hospital and the Clinics and Other Facilities should be damaged by any peril covered by the insurance to be provided by HCCA under <u>Section 13(a)</u>, but only to such extent that rebuilding or repairs can, in the sole and absolute discretion of HCCA, be completed within two hundred (200) days after the date of such damage, this Agreement shall not terminate, and HCCA shall, thereupon proceed with reasonable diligence to rebuild and repair the affected facility to substantially the condition which existed prior to such damage to the extent of proceeds from such insurance. The District shall be responsible to fund restoration costs in excess of the proceeds from such insurance.

- (c) <u>Waiver of Subrogation</u>. The District and HCCA hereby waive all rights to recover against each other, for any loss or damage arising from any cause or risk which would be covered in whole or in part, by insurance of the type required to be carried by each of them pursuant to this Agreement, or any other insurance actually carried by either of them or reasonably and customarily carried by similarly situated parties to the extent such insurance would cover such loss or damage incurred by such party. The District and HCCA shall cause their respective insurers to issue waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Hospital and the Clinics and Other Facilities, and any cost for the issuance of such endorsements shall be borne by the original insured under such policies consistent with the terms of this Agreement.
- (d) <u>HCCA's Insurance</u>. HCCA shall obtain by purchase or self-insure throughout the Term, commercial general liability insurance against all claims, demands, or actions arising out of or in connection with the Operations after the Effective Date of the Hospital and the Clinics and Other Facilities. The limits of coverage maintained by HCCA for commercial general liability shall be not less than \$1,000,000 with respect to each occurrence, not less than \$3,000,000 general aggregate. The District shall be added as an additional insured to HCCA general liability policy but only with respect to the District's liability arising out of use or operation of the Hospital and the Clinics and Other Facilities. HCCA shall obtain by purchase or self-insure through the Term professional liability insurance covering its Operations. Professional liability insurance limits shall not be less than \$1,000,000 with respect to each occurrence and not less than \$3,000,000 in general aggregate. The cost of such insurance shall be paid as an Operations expense as provided in Section 19(c).
- (e) <u>District Insurance</u>. The District shall maintain and pay for "tail coverage" or comparable insurance coverage, to prevent any gap in insurance coverage for any liability arising from the District's actions or occurrences prior to the Effective Date. Such insurance shall have limits of liability in amounts and upon the terms required under the MSA. In addition, the District shall be responsible for obtaining entity and individual professional liability, D & O / employment practices liability, and commercial general liability coverage in commercially reasonable amounts for its operations after the Effective Date.

(f) Indemnity.

(i) Subject to <u>Section 13(c)</u>, HCCA covenants and agrees to hold harmless the District, its Governing Body, officers and employees from, and indemnify and defend them against, any and all liabilities, claims, penalties, fees, violations, fines, losses, costs, damages, Liens and expenses, including reasonable attorney's fees ("<u>Damages</u>"), in any way related to any material breach by HCCA of any covenant to be performed by it pursuant to this Agreement. This indemnity shall survive termination of this Agreement. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT (INCLUDING ANY

INDEMNIFICATION OBLIGATIONS), IN NO EVENT SHALL HCCA BE LIABLE (WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT OR TORT OR BASED ON A WARRANTY OR OTHERWISE) FOR (I) FAILURE TO REALIZE SAVINGS OR LOSS OF PROFITS, REVENUE, OR ANY OTHER INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, AND (II) DIRECT AND OTHER DAMAGES IN EXCESS OF THE AMOUNT OF OPERATING FEES EARNED BY HCCA UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS PRIOR TO THE DATE OF THE APPLICABLE CLAIM FOR DAMAGES, IN EACH CASE, EVEN IF HCCA HAS BEEN ADVISED OF POSSIBILITY OF SUCH DAMAGES.

- (ii) Subject to <u>Section 13(c)</u>, the District covenants and agrees to hold harmless HCCA, HCCA's, members, managers, officers and employees from, and indemnify and defend them against, any and all Damages, in any way related to (i) any breach by the District of any covenant to be performed by it pursuant to the Agreement, or (ii) any liability of the District arising from or related to the District activities, whether during or prior to the Term. This indemnity shall survive termination of this Agreement.
- (iii) A party entitled to indemnification under this Section shall make commercially reasonable efforts to (i) mitigate the amount of any indemnification claim it has or may have against the Person giving the indemnity and (ii) pursue claims under insurance policies relating to the facts and circumstances giving rise to the indemnification claim. For purposes of determining the amount of liability under this Section, appropriate reductions shall be made to reflect the amount actually recovered pursuant to any insurance policy or other third party recovery that is received by the party entitled to indemnification in respect of the facts and circumstances giving rise to the indemnification claim.
- (g) <u>Review.</u> Insurance coverage amounts for both parties will be reevaluated every five years and adjusted consistent with industry practices for similar operations as mutually agreed.

14. Condemnation.

- (a) If a Substantial Part of the Hospital or the Clinics and Other Facilities should be taken for any public or quasi-public use under Law, or by right of eminent domain, or by private purchase in lieu thereof, then HCCA may terminate this Agreement and (i) the operation of the Hospital and the Clinics and Other Facilities shall revert to the District, and (ii) any proceeds received from the proceedings referenced by this Section shall be distributed to the District, subject to HCCA's right to recoup the value of its interest in the joint venture created hereunder, in an amount not less than the Termination Fee.
- (b) If part of the Hospital or the Clinics and Other Facilities shall be taken for any public or quasi-public use under any Law, or by right of eminent domain, or by private purchase in lieu thereof, and this Agreement is not terminated as provided in <u>Section 14(a)</u>, the fact that space in the Hospital and the Clinics and Other Facilities has been taken by the taking shall not relieve HCCA from its obligation to fulfill its obligations hereunder; provided, however, that HCCA's obligations, as applicable, shall be reduced in accordance with the damage that occurs as a result of the taking, in HCCA's sole and absolute discretion.

15. Authority.

The District represents and warrants that it has full right and authority to enter into this Agreement.

16. No Assumed Liabilities.

- (a) Unless otherwise expressly set forth herein, by execution of this Agreement, HCCA assumes no liabilities whatsoever of the District or any previous tenant or operator of the Hospital and the Clinics and Other Facilities, including, but not limited to, liability for any claims, demands, actions, suits or other obligations arising from an occurrence prior to the Effective Date.
- (b) By executing this Agreement, the District hereby assumes no liabilities whatsoever of HCCA.

17. Recording; Estoppel; Time.

- (a) <u>Recordation</u>. At the request of either party and at the expense of the requesting party, the parties shall execute a short form memorandum of this Agreement which identifies this Agreement, the parties, the Term, the legal description of the real property upon which the Hospital and the Clinics and Other Facilities are located, the joint venture described herein and such other matters as the parties may agree. Such memorandum shall be recorded in the Office of the County Recorder of Tulare County, Californía at the expense of the requesting party.
- (b) <u>Estoppel Certificate</u>. Each party hereto agrees from time to time, within twenty (20) business days after request of another party hereto, to deliver to said other party hereto, a commercially reasonable estoppel certificate stating (if true) that this Agreement is in full force and effect, that no default exists under this Agreement, the unexpired Term of this Agreement, and such other matters pertaining to this Agreement as may be requested by a party hereto.
- (c) TIME IS OF THE ESSENCE IN THE PERFORMANCE OF ALL COVENANTS OF THIS AGREEMENT.

18. Legal Compliance.

- (a) <u>Compliance Plan.</u> HCCA has received a copy of the District's Compliance Policies and Procedures, including the Code of Conduct and the Physician Referral, Stark Law, and Anti-Kickback policies and procedures together with a copy of the District's Corporate Integrity Agreement with the HHS Office of Inspector General dated July 20, 2009 (the "CIA"). HCCA shall abide by these policies and procedures and applicable Law. Any recommendations and/or revisions of such policies made by HCCA must be reasonably designed to help assure compliance with applicable Law. HCCA will be given prompt written notice of any changes made to the foregoing. HCCA may develop and recommend changes to the District's existing Compliance Plan (the "Compliance Plan") for implementation during the Term. Any such recommendations and/or revisions to the Compliance Plan must be approved by the Governing Body. HCCA shall use its commercially reasonable efforts to implement the Compliance Plan. All costs of developing, implementing and maintaining the Compliance Plan shall be borne by the District.
- (b) <u>Government Regulations</u>. HCCA shall, subject to the limitations set forth herein, use its reasonable commercial efforts to help assure that: (1) the District continuously complies with all material applicable Laws, including without limitation, the Hospital Law, State and Federal False Claims Act, Civil Monetary Penalty Law, State and Federal Anti-Kickback

statutes, State and Federal self-referral prohibitions and applicable Medicare conditions of coverage and/or participation and (2) HCCA retains and maintains in good standing all necessary accreditations, licenses, permits, approvals and authorizations required for the ongoing operation of the Hospital and other Clinics and Other Facilities.

- (c) <u>Accreditation Compliance</u>. HCCA shall, subject to the limitations set forth herein, take all steps necessary to assist the District to continue meeting the accreditation standards of the applicable accrediting agencies, as they exist or may be changed from time-to-time, and as may be applicable to the Hospital and other Clinics and Other Facilities' then current accreditation(s). HCCA shall have the right to select and/or change the applicable accreditation agency for the Hospital, and if applicable, the Clinics and Other Facilities, in its sole and absolute discretion.
- (d) <u>Ineligible Persons Disclosure Obligation.</u> HCCA shall use reasonable commercial efforts to monitor that none of HCCA's employees employed at the Hospital and other Clinics and Other Facilities have been sanctioned, debarred or suspended or otherwise deemed ineligible to participate in Medicare, Medicaid or other Federal health care programs, and procurement, or non-procurement programs (collectively, an "Ineligible Person"). HCCA represents to the District that HCCA is not an Ineligible Person nor has any pending proceedings or received notice of any action or proceeding to exclude, debar, suspend, or otherwise declare HCCA ineligible under any federally funded health program. HCCA shall notify the District within three (3) business days after becoming aware of any fact or circumstance that would make HCCA an Ineligible Person.
- Access to Records. HCCA shall, in accordance with Section 1395x(v)(1) of Title 42 United States Code until the expiration of four (4) years after the termination of this Agreement, make available upon written request to the Secretary of the United States Department of Health and Human Services, or, upon request, to the Comptroller General of the United States Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to verify the nature and extent of the costs of the services provided by HCCA under this Agreement. HCCA further agrees that in the event HCCA carries out any duties under this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelvemonth period with a related organization, such agreement shall contain a clause to the effect that until expiration of four (4) years, or longer as may be required by Law, after the furnishing of such services pursuant to such subcontract, the related organization shall make available upon written request to the Secretary of the United States Department of Health and Human Services, or, upon request, to the Comptroller General of the United States Accounting Office, or any of their duly authorized representatives, a copy of such contract and such books, documents and records of such organizations as are necessary to verify the nature and extent of such costs. This Section is included pursuant to and is governed by the requirements of federal Law. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by the parties or any of the parties' representatives by virtue of this Agreement.
- (f) No Obligation to Refer Patients. Nothing contained in this Agreement shall require (directly or indirectly, explicitly or implicitly) either HCCA or its affiliates or the District or its affiliates, to refer any patients to one another or to use the Hospital or the Clinics and Other Facilities as a precondition to receiving the benefits set forth herein.

- (g) Regulatory Filings and Approval. The District shall cooperate fully with any and all regulatory filings necessary for the approval of the execution and implementation of this Agreement, including those related to HCCA's use of any Permit and Medicare / Medi-Cal provider agreements in its name during the Term.
- (h) <u>Tax and Medicare Effect</u>. None of the parties (nor such parties' counsel or accountants) has made or is making any representations to any other party (nor such party's counsel or accountants) concerning any of the tax or Medicare effects of the transactions provided for in this Agreement, as each party hereto represents that each has obtained, or may obtain, independent tax and Medicare advice with respect thereto and upon which it, if so obtained, has solely relied.

19. Operating Fee.

(a) Operating Fee. As HCCA's fee for the performance of the services under this Agreement, HCCA shall receive monthly (in advance on the first day of each month) an amount (the "Operating Fee") equal to the last monthly Management Fee charged to the District under the MSA immediately prior to the Effective Date of this Agreement multiplied by 1.25. The Operating Fee shall thereafter be increased as provided in Section 19(b).

(b) CPI Adjustment.

- (i) "CPI" means the monthly index of the U.S. City Average Consumer Price Index for Urban Wage Earners and Clerical Workers Medical Care Services (1982-84 equals 100) published by the United States Department of Labor, Bureau of Labor Statistics or any successor agency that shall issue such index. In the event that the CPI is discontinued for any reason, the parties shall use such other index, or comparable statistics, on the cost of medical care services in the United States, as shall be computed and published by any agency of the United States or, if no such index is published by any agency of the United States, by a responsible financial periodical of recognized authority.
- (ii) <u>Inflation Adjustment</u>. Beginning on the first January 1 occurring after the Effective Date, and every year thereafter, the Operating Fee shall each be adjusted for inflation as follows:
- (1) The then existing Operating Fee shall be multiplied by the greater of (i) the CPI percentage increase using the latest published data since the last adjustment or (ii) five percent (5%) ("CPI Increase");
- (2) The then existing Operating Fee shall then be added to the CPI Increase ("Net Adjusted Operating Fee"); and
- (3) The Net Adjusted Operating Fee will then be multiplied by 1.01 to determine the Operating Fee for the next ensuing calendar year.
- (4) For example, the latest published CPI in January 2015 (e.g. November 2014) will be compared to the CPI for November 2013 (assuming that was the latest available published data) and the 2014 Operating Fee will be multiplied by the percentage difference. Assuming a three percent increase, the Operating Fee of \$225,000 would be increased by \$6,750 for a new monthly Net Adjusted Operating Fee of \$231,750. That amount would then be multiplied by 1.01 resulting in a new monthly Operating Fee of \$234,067.50.

- (c) <u>Expenses</u>. Except as otherwise provided in this Agreement, all of the costs and expenses, including Operating Expenses, (whether operating or capital) of maintaining and operating the Hospital and other Clinics and Other Facilities and their respective facilities and the Operations shall be the sole cost and expense of the District, and shall not be an expense of HCCA. Expenses shall be paid by HCCA from revenues arising from the Operations and to the extent same are insufficient, the District shall fund same in accordance with Section 2(g).
- (d) <u>Late Payments</u>. If payment of amounts due hereunder, including the Operating Fee, Operating Expenses, other expenses, employee compensation and reimbursement of other amounts, are not made on the due date then interest shall accrue on any unpaid amounts for each day beyond the due date at a rate equal to the lesser of: (a) one percent (1.0%) per month or (b) the maximum non-usurious interest rate allowable by Law.
- (e) <u>Senior Indebtedness Status</u>. The obligations of the District under this Agreement rank and shall rank at least senior in priority of payment to all other unsecured debt of the District. Fund transfers and other payments received by the District shall be directed, regardless of the payment purpose indicated in the payment document, according to the following priority ranking: (1) payment of the Bonds; (2) payment of the Operating Fee and other amounts due hereunder and (3) all other debts of the District.
- (f) <u>Setoff.</u> Notwithstanding any provision of this Agreement to the contrary, HCCA shall have the right from time to time to setoff any amounts owed by the District to HCCA against any amounts owed by HCCA to the District and/or from any funds of the District over which HCCA has a Power of Attorney or right of disbursement (including the Charitable Care and Operational Support Fund), whether pursuant to this Agreement or otherwise.

20. Books and Records.

- (a) <u>Maintenance of Books and Records</u>. HCCA shall supervise the maintenance of the books of account covering the operation of the Hospital and the Clinics and Other Facilities. Such books of account shall be maintained on an accrual basis in accordance with GAAP.
- (b) <u>Reports and Financial Statements</u>. HCCA shall from time to time deliver to the Governing Body, from the District's data related to the Operations, the reports and financial statements reasonably requested by the Governing Body.
- (c) <u>Inspection of Records</u>. Authorized agents of the District shall have the right at all reasonable times during usual business hours, at the District's expense, to audit, examine and make copies of or extracts from the books of account maintained by HCCA with respect to the Operations. Such right may be exercised through any agent, independent public accountant or employee of the District designated by the District.

21. Confidentiality.

(a) <u>Confidentiality</u>. The parties agree that: (a) neither party will disclose any secrets or confidential technology, proprietary information, or trade secrets of the other party without the prior written consent of the transmitting party, except (i) to the receiving party's agents, advisors, auditors and representatives; or (ii) as may be necessary by reason of legal, accounting or regulatory requirements beyond the reasonable control of the recipient party; and

- (b) should this Agreement expire or terminate, neither party will take or retain any papers, records, files, computer programs and software, other documents or copies thereof, or other confidential information of any kind belonging to the other party, except for copies of same as may be reasonably necessary to defend any anticipated litigation or respond to claims or pursuant to ordinary data backup or storage processes.
- (b) <u>Press Release</u>. Except as required by Law, it is understood that all press releases or other public communications of any sort relating to the negotiation, execution and/or operation of this Agreement, and the method of the release for publication thereof, will be subject to the prior written approval of HCCA.

22. Long Term Joint Operating Agreement.

- (a) Attached hereto as Exhibit F is the form of Joint Operating Agreement (the "Long Term Operating Agreement") that the parties have executed and shall become effective, upon written notification from HCCA to the District after: (i) all Bonds which require compliance with Rev. Proc. 97-13 (or any successor regulatory requirement thereto containing similar limitations), have been repaid or otherwise defeased or the Internal Revenue Code limitations or that the conditions to the proposed transaction set forth in the Long Term Operating Agreement have been waived by the Bond trustee(s); (ii) any required notices to the Attorney General regarding the transaction, if any, have been provided, including any that may be required pursuant to Cal. Code Regs., tit. 11, § 999.40; and (iii) any required approvals from the Attorney General with respect to the charitable care assumption by HCCA have been received, if any. The District shall use its reasonable commercial efforts to repay or defease the Bonds or obtain the Bond Trustee's consent as soon as reasonably practicable following the Effective Date. The District shall fully cooperate with HCCA's efforts to obtain the consent of the Attorney General, and the District shall promptly make such requests and take such actions as HCCA shall request to obtain the Attorney General's consent.
- (b) The District agrees that HCCA shall have the right to determine and direct the strategy and process by which the District and HCCA effectuate the Long Term Operating Agreement. HCCA shall have the right to take the lead in all meetings and communications with the Bond trustee(s) and / or any other party whose consent is required to effectuate the Long Term Operating Agreement, including by determining the appropriate timing of any such meeting or communications (including the timing of the submission of any filing with, or the response to any request by, any consent party or any action to be taken pursuant to this Section).
- (c) The District shall: (a) promptly give all notices which either party deems necessary, proper or advisable to the Bond trustee(s) and other applicable third parties which may be necessary or deemed desirable by HCCA in connection with effectuating the Long Term Operating Agreement and the consummation of the transactions contemplated thereby; (b) use its best efforts to obtain all Bond trustee and other approvals, consents, permits, authorizations, and orders necessary, proper or deemed desirable by HCCA in connection with effectuating the Long Term Operating Agreement and the consummation of the transactions contemplated thereby; (c) Permit HCCA to review in advance, and consult with HCCA on, any proposed filing, submission or communication (whether verbal or written) by the District or its Affiliates, and (d) give HCCA the opportunity to attend and participate at any meeting with the Bond trustee(s) or any other party's representatives that are necessary, proper or advisable to effectuate the Long Term Operating Agreement. The District and its accountants, and attorneys shall cooperate fully with HCCA in the preparation of any statements or applications made by HCCA to the Bond

trustee(s) and other applicable parties whose consent is required to effectuate the Long Term Operating Agreement and the transactions contemplated thereby and to furnish HCCA with all information concerning the District necessary or deemed desirable by HCCA for inclusion in such statements and applications, including, without limitation, all requisite financial statements and schedules.

(d) Between the date hereof and the effective dates of the Long Term Operating Agreement, the District shall promptly notify HCCA of (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Long Term Operating Agreement becoming effective, (ii) any notice or communication from the Bond trustee(s) or any other party from whom consent is required, and (iii) any action or proceeding commenced or, to the knowledge of the District, threatened against HCCA and/or the District which relates to the consummation of the transactions proposed under the Operating Agreements.

23. Miscellaneous.

- (a) <u>Additional Assurances</u>. The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, at the request of a party, the other party or parties shall execute such additional instruments and take such additional actions as the requesting party may deem necessary to effectuate this Agreement.
- (b) <u>Complete Agreement</u>. This Agreement constitutes the entire agreement between the parties with respect to the operation of the Hospital and the Clinics and Other Facilities and supersedes any and all prior agreements, either oral or written, between the parties with respect thereto.
- (c) <u>Consequential Damages</u>. Except as expressly provided herein to the contrary, neither party shall be liable under this Agreement for consequential damages, incidental damages, indirect damages, or special damages or for loss of profit, loss of business opportunity or loss of income. Notwithstanding anything to the contrary contained in this Agreement, the parties hereto acknowledge and agree that the terms and provisions of this <u>Section 23(c)</u> shall not limit, alter, modify, impair, or otherwise affect any of the remedies of HCCA set forth in this Agreement, including the right to be paid the Termination Fee.
- (d) <u>Limitation of Liability</u>. Notwithstanding any provision in this Agreement to the contrary, under no circumstances shall HCCA or any HCCA Party have any personal liability for any failure to perform any obligations arising out of or in connection with this Agreement or for any breach of the terms or conditions of this Agreement (whether written or implied). No personal judgment shall lie against HCCA or any HCCA Party and any judgments so rendered shall not give rise to any right of execution or levy against any of their assets. Any judgments rendered against HCCA shall be satisfied solely out of the assets of HCCA. The foregoing provisions are not intended to relieve HCCA from the performance of any of HCCA's obligations under this Agreement, but only to limit the personal liability of HCCA and HCCA Parties in case of recovery of a judgment against any of them.
- (e) <u>Binding Agreement</u>. This Agreement and the rights and obligations of the parties hereunder are binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

- Governing Law. This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed, and governed by and in accordance with, the Laws of the State. The parties agree that the exclusive jurisdiction and venue of all actions claims, or other legal proceedings arising in any manner pursuant to this Agreement, shall be vested in the Superior Court of the County of Los Angeles in the State and in no other. Notwithstanding any other provisions contained in any other document executed simultaneously herewith, each party, for itself, and all successors, assigns, heirs, executors, or future parties at interest agree and accept the jurisdiction of these courts and waive any defense of personal jurisdiction, forum non conveniens, venue or similar defenses and irrevocably agree to be bound by any judgment rendered in the aforementioned Court; exclusive of any and all other Federal or state courts.
- Headings. The section and subsection headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the Agreement.
- Notices. Except as otherwise expressly permitted herein, all notices required or permitted to be given hereunder shall be in writing (whether or not written notice is specified herein) and shall be personally delivered, or mailed by United States mail, postage prepaid, registered or certified, return receipt requested, or sent by a nationally recognized overnight delivery service, or sent by electronic transmission system. Unless such information is changed by written notice given by the affected party, any such notices shall be sent to the following addresses:

If to HCCA:

HealthCare Conglomerate Associates Attention: Benny Benzeevi, M.D. 810 North Cherry Street Tulare, CA 93274 Email: benny@Healthcca.com

With a copy to: Bruce R. Greene, Esq. Baker Hostetler LLP 11601 Wilshire Blvd. Suite 1400 Los Angeles, CA 90025 Email: bgreene@bakerlaw.com

If to the District: Tulare Regional Medical Center Attention: Chair of the Board 869 North Cherry Street Tulare, CA 93274

Email: sbell@tulareregional.org

With a copy to: Dooley, Herr, Pedersen & Berglund Bailey Attention: Kris Pedersen 100 Willow Plaza, Suite 300 Visalia, CA 93291 Email: kpedersen@dhlaw.net

All notices sent by personal delivery shall be effective and deemed served upon receipt thereof. All notices sent by mail shall be effective and deemed served three (3) calendar days after being deposited in the United States mail. All notices sent by overnight delivery service shall be effective and deemed served when delivered by such overnight delivery service. All notices sent by electronic transmission system shall be effective and deemed served on the day of transmission, if on a business day and during business hours (9am until 5pm, PT) or otherwise on the next business day thereafter.

- (i) <u>Survival of Representations</u>. All of the representations and warranties, and those covenants and agreements contained in this Agreement which are stated to survive termination or expiration of this Agreement, shall survive the expiration or the termination, for any reason of this Agreement. No performance or execution of this Agreement, in whole or in part, by any party hereto, no course of dealing between the parties hereto or any delay or failure on the part of any party in exercising any rights hereunder or at Law or in equity, and no investigation by any party hereto, shall operate as a waiver of rights of such party, except to the extent expressly waived in writing by such party.
- (j) <u>Counterparts</u>. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Signatures transmitted by facsimile or e-mail or other digital means shall be accepted as original signatures.

(k) Severability.

- (i) Each and every provision of this Agreement is severable, and the invalidity of one or more of such provisions shall not, in any way, affect the validity of this Agreement or any other provisions hereof. If any clause or provision of this Agreement is illegal, invalid or unenforceable, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.
- The parties hereby have made all reasonable efforts to ensure this Agreement represents and memorializes the complete and final agreement between the parties hereto, and that it complies with all applicable Law. In the event there is a change in Law, or the interpretations thereof, whether by statute, regulation, agency or judicial decision, or otherwise, that has any material effect on any term of this Agreement, or in the event that a party's reputable counsel (being counsel with at least ten (10) years' experience in health care Law) determines that any term of this Agreement poses a material risk of violating any Law, then the applicable term(s) of this Agreement shall be subject to renegotiation and either party may request renegotiation of the affected term or terms of this Agreement, upon written notice to the other party, to remedy such condition. In the interim, the parties shall perform their obligations hereunder in full compliance with applicable Law. The parties expressly recognize that upon request for renegotiation, each party has a duty and obligation to the other only to renegotiate the affected term(s) in good faith and, further, the parties expressly agree that their consent to proposals submitted by the other party during renegotiation efforts shall not be unreasonably withheld or delayed. The parties further expressly recognize that in any such renegotiation, the relative economics to each of the parties shall be preserved. Should the parties be unable to renegotiate the term or terms so affected so as to bring it/them into compliance with Law or the

interpretation thereof within sixty (60) days of the date on which written notice of a desire renegotiation is given, then either party shall be entitled, after the expiration of said sixty (60) day period, to terminate this Agreement upon sixty (60) additional days' notice to the other party, provided that such party has received an opinion of reputable legal counsel, which legal counsel and opinion are reasonably acceptable to the other party, that it is more likely than not that this Agreement violates applicable Law. If this Agreement is terminated pursuant to this Section 23(k), HCCA shall be entitled to receive payment of the Termination Fee.

(I) <u>Cumulative Rights and Remedies</u>. Any right, power or remedy provided under this Agreement or any party hereto shall be cumulative and in addition to any other right, power or remedy provided under this Agreement or existing in Law or in equity, including, without limitation, the remedies of injunctive relief and specific performance.

(m) Modification and Waiver.

- (i) This Agreement may only be amended by a writing signed by both parties.
- (ii) No failure by any party to insist upon strict compliance with any term of this Agreement, to exercise any option, enforce any right, or seek any remedy upon any default of any other party shall affect, or constitute a waiver of, the first party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default; nor shall any custom or practice of the parties at variance with any provision of this Agreement affect or constitute a waiver of, any party's right to demand strict compliance with all provisions of this Agreement.
- (n) Attorneys' Fees. If any action at law (or in any arbitration proceeding required hereunder) is brought to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief, as determined by the applicable court or arbitrator. The foregoing includes reasonable attorney's fees in connection with any bankruptcy proceeding (including relief from stay litigation), and in connection with any appeals.
- (o) <u>Binding Effect</u>. This Agreement has been duly executed by the parties hereto and constitutes a valid and binding obligation enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar Laws affecting the rights of creditors generally, and except as enforceability may be subject to general principles of equity.
- (p) Independent Contractor Status. Notwithstanding any provision contained herein to the contrary, each party understands and agrees that the parties hereto intend to act and perform as independent contractors. Therefore, the District is not an employee or partner of HCCA. Nothing in this Agreement shall be construed as placing the District in a relationship of employer-employee or partners with HCCA. The parties shall not have the right to make any promises, warranties or representations, or to assume or create any obligations, on behalf of the other party except as otherwise expressly provided herein or as otherwise agreed to in writing. The District and HCCA agree to be solely and entirely responsible for their respective acts and for the acts of any of their respective employees and agents, except as otherwise expressly provided herein.

- (q) Ambiguities and Uncertainties. This Agreement and any ambiguities or uncertainties herein, or the documents referenced herein, shall be equally and fairly interpreted and construed without reference to the identity of the party or parties preparing this Agreement or any of the documents referred to herein, on the express understanding and agreement that the parties participated equally in the negotiation of the Agreement and the documents referred to herein, or have had equal opportunity to do so. Accordingly, the parties hereby waive the benefit of California Civil Code section 1654 and any successor or amended statute providing that in cases of uncertainty, language or a contract should be interpreted most strongly against the party who caused the uncertainty to exist.
- (r) <u>Consents, Approvals and Discretion</u>. Except as herein expressly provided to the contrary, whenever this Agreement requires any consent or approval to be given by any party or any party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld, conditioned or delayed and such discretion shall be reasonably exercised, except as otherwise provided herein. If no response to a consent or request from HCCA to the District for approval is provided to HCCA within ten (10) days from the receipt by the District of the request, then the consent or approval of the District shall be deemed to have been given.
- (s) Expiration of Time Periods. In the event that any date specified herein is, or that any period specified herein expires on, a Saturday, a Sunday, or a state or federal holiday, then such date or the expiration date of such period, as the case may be, will be extended to the next succeeding business day. A business day is a day on which banks are required to be open for business in Los Angeles County, California. All references in this Agreement to "days" are to calendar days, unless business days are so indicated.
- (t) <u>Force Maleure</u>. Except with respect to payment obligations, neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service deemed resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work interruptions beyond the reasonable control of either party. However, both parties shall make good faith efforts to perform under this Agreement in the event of any such circumstances.
- (u) <u>No Third-Party Beneficiaries.</u> The rights, privileges, benefits, and obligations arising under or created by this Agreement are intended to apply to and shall only apply to the parties and to no other Persons, except as otherwise provided herein.

[Signatures on next page]

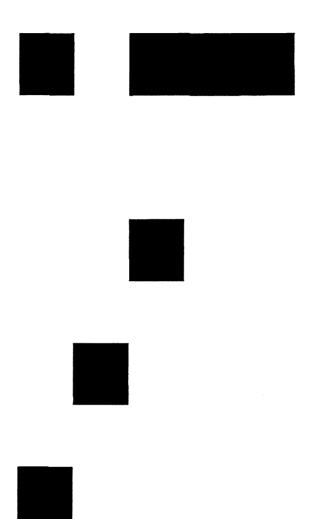


EXHIBIT A HOSPITAL

869 N Cherry St, Tulare, CA 93274

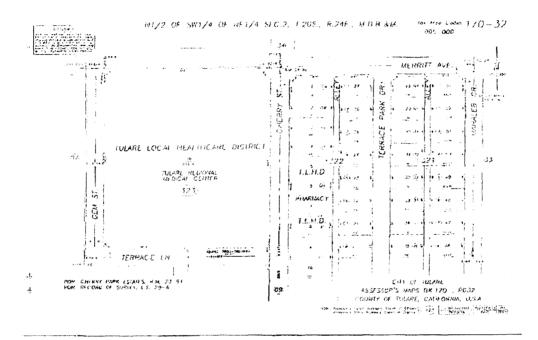
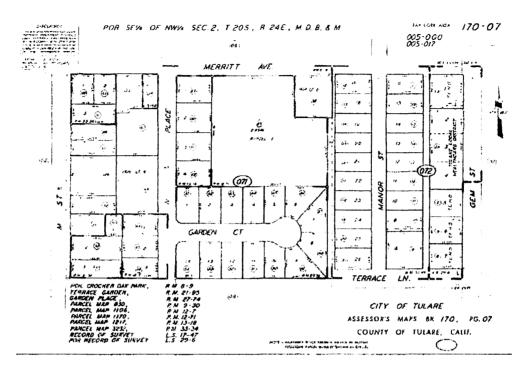


Exhibit A

CONFIDENTIAL AND PROPRIETARY

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The parties acknowledge that the foregoing description and maps do not represent all of the real property associated with the Hospital which is owned by the District. The District hereby grants HCCA the right to amend and/or supplement this exhibit to properly describe the real estate associated with the Hospital, from time to time.

EXHIBIT B CLINICS AND OTHER FACILITIES

Evolutions Fitness & Wellness 1425 E. Prosperity Avenue Tulare CA

Family X-Ray Center 880 E. Merritt Ave Tulare, CA 93274

Hillman Healthcare Center - 1062 South K Street Tulare, CA. 93274

Kingsburg Healthcare Center - 1200 Smith Street Kingsburg, CA. 93631

Lindsay Healthcare Center - 845 N Sequoia Ave Lindsay, CA. 93247

West Street Healthcare Center - 325 N West Street Tulare, CA. 93274

Woodville Healthcare Center - 16796 Ave 168 Woodville, CA. 93257

Allied Services Center
Tulare Regional Medical Center Clinical Laboratory
Allied Services Building
869 N. Cherry
Tulare, CA 93274

Tulare Regional Laboratory - Alternate Collection Site 799 Cherry Street Tulare, CA 93274

Mineral King Toxicology Laboratory 880 E. Merritt, Suite 107 Tulare, CA 93274

Retail Pharmacy
Tulare District Hospital Pharmacy
869 N Cherry St
Tulare, CA 93274

Together with such other facilities and clinics as are owned, leased or otherwise operated by District that HCCA elects to operate hereunder, by notice to District from time to time.

Exhibit B

CONFIDENTIAL AND PROPRIETARY

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EXHIBIT C CONTRACTS

Contracts shall include all Contracts that relate to the Operations as of the Effective Date. IHCCA shall supplement this Exhibit within thirty (30) days following the Effective Date.

Exhibit C

CONFIDENTIAL AND PROPRIETARY
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EXHIBIT D ASSUMED CONTRACTS

HCCA shall provide the information for this Exhibit within thirty (30) days following the Effective Date.

Exhibit D

CONFIDENTIAL AND PROPRIETARY © HealthCare Conglomerate Associates

EXHIBIT E CHARITABLE POLICIES OF THE HOSPITAL

The District's Charity policy as in effect on May 1, 2014. The Charity Policy shall include the foregoing Charity Policy together with any changes thereto as mutually agreed to by the parties prior to the Effective Date pursuant to the terms of the MSA.

Exhibit E

CONFIDENTIAL AND PROPRIETARY © HealthCare Conglomerate Associates

POLICY / GUIDELINE

TO:

All Departments

FROM:

Administration

SUBJECT: Financial Assistance (Charity Care) Program

PURPOSE:

The mission of Tulare Regional Medical Center California is to provide safe, efficient, technologically advanced healthcare with the respect for the diversity of our region. Assembly Bill 774 (AB 774) became effective January 1, 2007. The law mandates that as a condition of obtaining or holding an acute care hospital license. Hospitals must limit bills to the uninsured with family incomes at or below 350% of the Federal Poverty Level (FPL) and individuals with high cost medical bills compared to their family income. Bills are limited to the higher of the government reimbursement rates for comparable health services. This policy complies with the requirements of AB 774.

PROCEDURE:

Who is financially eligible?

Non-Insured Patients:

- 1. No third party insurance
- 2. No Medicare/Medi-Cal
- 3. No Workers Compensation
- 4. No Auto Insurance (medical portion for third party liability)
- 5. Family income at or below 350% of Federal Poverty Level (FPL)

Insured Patients with Patient Responsibility:

- 1. Family income at or below 350% FPL
- Financial assistance is available for patients whose out of pocket expenses exceed 10% of family income in the prior 12 month period.
- 3. Special consideration may be made for patients with out of pocket expenses less than 10% of family income in the prior 12 month period.

Effective Date: 07/26/12

(11)Fiscal & Business

Patient Accounting:

APPROVED:

Financial Assistance (Charity Care)

Program 11-3028

Board Of Directors: 07/25/12

POLICY/GUIDELINE MANUAL

- 1. Eligibility for financial assistance will be considered for all patients who meet the above criteria. The granting of financial assistance shall be based on an individualized determination of financial need and shall not take into account age, gender, race, socioeconomic or immigrant status, sexual orientation, or religious affiliation.
- 2. Tulare Regional Medical Center recognizes that there may be unusual or extenuating financial circumstances which may exceed the specific criteria as established in this policy and warrant special consideration. In such cases, a description of the unusual circumstances should be forwarded by Hospital staff to the Director of Patient Access / or designee for review and then forward to the Chief Financial Officer who will make the final determination as to the amount, if any, of financial assistance allowance to be granted.
- 3. Tulare Regional Medical Center recognizes that the financial status of patients may change over time. Hospital personnel will actively assist families in securing eligibility for any program with the cooperation of patients and their families. Services for dates of service prior to discharge date of January 1, 2007 are not considered under this policy.
- 4. The Director of Patient Access /or designee will review all applications to determine eligibility for financial assistance. Reasonable efforts will be made to verify financial data. All financial information provided will be considered confidential and staff will respect each circumstance with dignity.
- 5. The Director of Patient Access or designee will use the following table to determine the amount of financial assistance. This schedule will be maintained and updated annually by the Patient Access Director or designee.

Federal Poverty Level	Charity Care Allowance [write off]		
	Inpatient	Outpatient	
a. Less than 200%	100%	100%	
b. 201-250%	90%	95%	
c. 251-300%	80%	90%	
d. 301 - 350%	75%	87%	

- e. Any other type of discount not adhering to the above schedule is not considered a Financial Assistance Discount and will follow the terms and conditions set forth in the Discount Policy.
- f. In all cases Tulare Regional Medical Center will not collect more than the average reimbursement of its government payers which includes but is not limited to Medicare, Medi-Cal, and Healthy Family Programs.
- 6. Patient guarantors must complete a financial assistance application, be in process with an eligibility application for a government sponsored insurance program or set

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POLICY/GUIDELINE MANUAL

up a payment plan within 150 days of service or the account will be assigned to a third party billing agency at full billed charges upon 150 days after initial billing.

- 7. Written notification of determination of eligibility or non-eligibility for financial assistance will be forwarded to the applicant by the Director of Patient Access / or designee, within 30 days of receipt of the Financial Profile.
- 8. Patients or guarantors have the right to appeal a non-eligible decision within 30 days of the denial letter. Appeals will be forwarded to the Director of Patient Access / or designee who will decide to uphold or overturn the original decision within 15 days.
- 9. An emergency physician as defined in AB 774, Section 127450, who provides emergency medical services in a hospital that provides emergency care is also required by to provide discounts to uninsured patients or patients with high medical costs who are at or below 350% of the federal poverty level.
- 10. Tulare Regional Medical will comply with OSHPD reporting requirements including the following information:
 - a. Submission of charity care and discount policies
 - b. Submission of eligibility procedures for charity care and discount payment
 - c. Submission of review procedures for charity care and discount payment
 - d. Submission of the application used for charity care and discount payment

Charity Care Qualifications & Calculations

- Financial obligations not eligible for consideration are those whose injury is a
 compensable injury for the purposes of workers' compensation or auto insurance.
 Further, not all services are eligible for charity care. <u>Elective services are not eligible</u>. Special consideration may be made by the Director of Patient Access /or designee, Chief Financial Officer, or Chief Executive Officer.
- 2. A patient may qualify for financial assistance prior to admission, after admission, or after discharge. Written price estimates are available prior to service for inpatient and outpatient services with the exception of emergency services. Every attempt will be made to identify all available funding sources prior to or at time of visit. If a funding source cannot be identified after full compliance by the patient or guarantor, financial assistance will be considered. The hospital contact information for financial assistance is listed on the Financial Assistance application.
- 3. A financial assistance application, provided by TRMC Hospital staff, must be completed with the assistance of a Financial Counselor or by completing, signing and returning it to Tulare Regional Medical Center Admitting Department. This document must be completed within 30 60 calendar days from date of discharge. The application shall remain valid for services rendered within a 180 day period or upon a new admission to the hospital. The financial assessment will include a

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POLICY/GUIDELINE MANUAL

review of the family's gross income, number of family members, outstanding balances of the medical bills, and assets when appropriate. Copies of prior year tax return (preferred documentation) or current pay stubs will be needed to verify income information. Other documents proving status of assets may be required. The information contained in the financial application will not be used in collection efforts.

- 4. For purposes of determining family size, the following guidelines will be used.
 - a. For patients 18 years of age and older, patient's family includes spouse, domestic partner and dependent children under 21 years of age whether living at home or not.
 - b. For patients under 18 years of age, patient's family includes parents, caretaker relatives and other children under 21 years of age of the parent or caretaker relative.
- 5. Financial assistance information is available from Tulare Regional Medical Center through various means, including the publication of notices in patient bills and by posting notices in high volume areas such as the Emergency Department, Clinics, Admitting, and other places as Tulare Regional Medical Center may elect. Such information shall be provided in English and Spanish, and will be translated for patients/guarantors who speak other languages.
- 6. Any patient account recommended for partial or total financial assistance, after meeting the guidelines set forth in this policy, requires the Director of Patient Access / or designee to prepare all the patient documentation. The following approval process applies:
 - a. \$0-\$25.000- Patient Access Director
 - b. Over \$25,001- Chief Financial Officer
- 7. Tulare Regional Medical Center will assign any financial obligation to a debt collector after 150 calendar days from date of discharge of non-payment of an established payment plan or 30 calendar days of non-payment on an account where the patient guarantor is not in process with an eligibility application for a government sponsored insurance program or is attempting in good faith to settle an outstanding bill.
- 8. Interest or finance charges will not be added to any account that has been approved for Financial Assistance.
- 9. The financial assistance policy shall also include an extended payment plan to allow payment of the discounted price over time. The hospital and patient will negotiate terms of the payment plan. If the patient fails to make payments for a period of 90 days, the payment plan will be considered inoperative and TRMC will inform the patient via phone call and written correspondence that the payment plan has terminated and the account may be forwarded to collections.

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POLICY/GUIDELINE MANUAL

- 10. In the course of debt collection involving low-income uninsured patients who are at or below 350% of the Federal Poverty Level, Tulare Regional Medical Center will follow all guidelines established by AB 774. This provision will not preclude Tulare Regional Medical Center from pursuing reimbursement from third party liability settlements.
- 11. A patient deemed homeless will qualify for presumptive eligibility. To be deemed homeless, the individual must not have a fixed, regular, and adequate nighttime residence or has a primary nighttime residence that is a supervisor publicly or privately operated shelter.
- 12. All documentation will be maintained by Patient Access Services in accordance with regulatory guidelines.
- 13. Tulare Regional Medical Center Home Care and Retail Pharmacy will use best efforts to follow the hospital's approved charity care policy. Separate or additional applications to be completed by the patient/family will not be required. Referral will be made to use the Hospital's financial information.
- 14. This policy does not apply to professional services provided to Hospital patients by physicians or other medical providers including but not limited to Radiology, Anesthesiology, Pathology other than Emergency Room services as required by AB774, Section 127450.

Questions concerning any aspect of this policy/guideline should be referred to Patient Access or Administration.

This policy/guideline replaces and supersedes all previous policies/guidelines concerning this matter and is effective immediately.

Effective Date: 07/26/12

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#11-3028

Descriptive Name:

Financial Assistance (Charity Care) Program

Descriptive Type:

New Policy

Document Number:

11-3028

Attachments:

None

Author:

Karan Levering, Director, Patient Access (First Source) in

conjunction with the Chief Financial Officer, TRMC

Typist:

Karan Levering

Creation Date:

04/15/12

Prev. Dist. Date:

None

Committee Review and Approval:	Approval Date:	Comments:
Board of Directors	07/25/12	

Effective Date:

07/26/12

Forward To:

Policy Binders - (PBX and Administration) and Post to

Intranet Site

Disposition:

Copy and Distribution - Administration

Comments:

Policy replaces 11-1002 Charity Care Program

EXHIBIT F LONG TERM OPERATING AGREEMENT

See attached

Exhibit F

CONFIDENTIAL AND PROPRIETARY
© HealthCare Conglomerate Associates

EXHIBIT D

Limited Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that in accordance with the terms of that certain Management Services Agreement, dated of even date herewith, (the "Agreement"), by and among HealthCare Conglomerate Associates, LLC ("Manager") and Tulare Local Healthcare District dba Tulare Regional Medical Center (the "District"), the District hereby makes, constitutes and appoints Manager as the District's true and lawful attorney-in-fact (the "Attorney-In-Fact") and in the District's name, place and stead to act in connection with any and all matters relating to any of the following and with all requisite authority and power and as legally permissible:

- 1. To bill, collect, or cause to be collected, all amounts related to the operation of the Hospital and the Clinics and the Other Facilities, including, but not limited to, the accounts receivable, in the District's name, and, when deemed appropriate by the Attorney-In-Fact, settle and compromise claims, and assign such other items to a collection agency, bring a legal action or take such other appropriate action against an obligee;
- 2. To receive, take possession of, endorse in the name of the District, and deposit into the Depository Account, the Master Account or other account, as deemed appropriate by Manager, in accordance with the terms of the Agreement, any notes, checks, money orders, payments, insurance payments, and any other instruments received in payment of services provided at the Hospital and the Clinics and Other Facilities.
- 3. To deposit all amounts collected into the Depository Account, Master Account or other account, as deemed appropriate by Manager, in accordance with the terms of the Agreement.
- 4. To sign checks, drafts, bank notes or other instruments on behalf of the District, and to make withdrawals from the Depository Account, Master Account or other applicable account for payments specified in this Agreement.
- 5. To execute any instruments or documents or take such other or further action necessary or appropriate in connection with any of the above.

This Power of Attorney is coupled with an interest, and shall give the Attorney-In-Fact the power and authority to act in the District's name as fully as the District could do if present. The District hereby ratifies and confirms and agrees to ratify and confirm whatsoever the Attorney-In-Fact shall do or purport to do by reason of these presents.

Capitalized terms not defined herein shall have the meaning ascribed to them by the Agreement. Any provision hereof which may prove unenforceable under any Law shall not affect the validity of any other provisions hereof.

Any photocopy of this Power of Attorney shall have the same force and effect as the original.

Exhibit D

603545637.7

IN WITNESS WHEREOF, I have he	reunto set my hand and seal effective as of the day of
WITNESS:	Tulare Local Healthcare District, d/b/a Tulare Regional Medical Center
Signature:Print Name:	By:Sherrie Bell, Chairman of the Board/President
Signature:Print Name:	-

Exhibit D

603545537.7

EXHIBIT 3

	2011	2012	2013	2014	2015	2016 (extrapolated to 12 months)	data 1 1 2016 through 9 2016
ABRAHAM BETRE	739	684	337	355	327	63 °	47
PRADEEP KAMBOJ	133	116	18	0	1	0	0
ANIL PATEL	201	172	55	ı	0	0	0
FADEL SHAMMOUT	28 (first year in Tulare)	458	171	176	120	7	5 (moved away midyear
LONNIE SMITH	3	4	6	ı	2	0	0
ARNOLD WELDEN	146	146	67	4	0	0	0
ISTVAN POTORKE	487	380	239	208	Retired	Retired	Retired

EXHIBIT 4

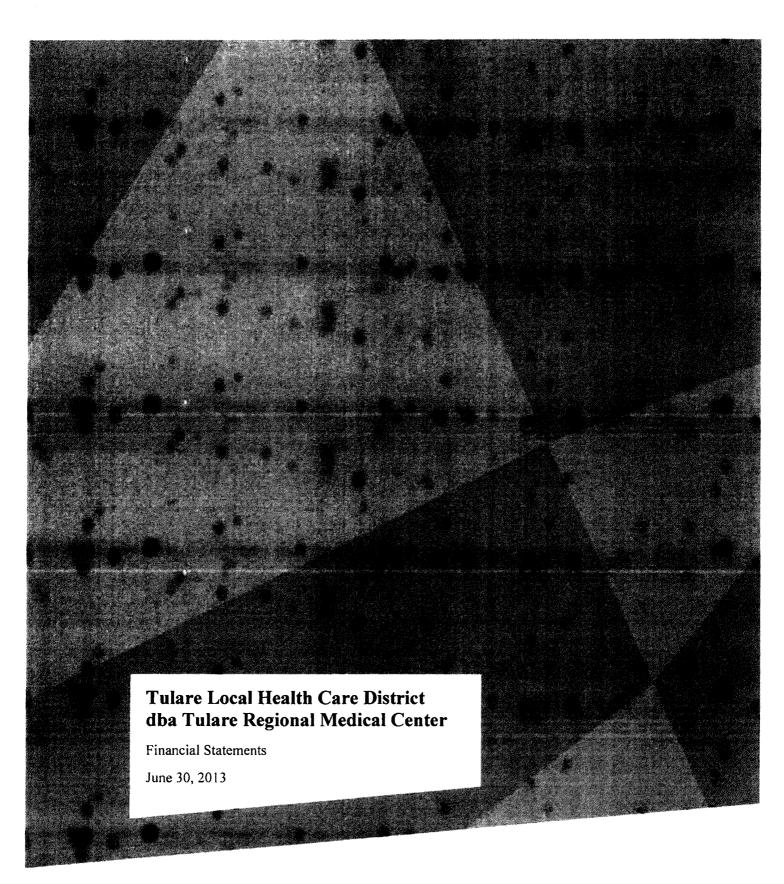




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TULARE REGIONAL MEDICAL CENTER

Management's Discussion and Analysis
June 30, 2013

The management of the Tulare Local Health Care District (dba Tulare Regional Medical Center, or the District) has prepared this annual discussion and analysis in order to provide an overview of the District's performance for the fiscal year ended June 30, 2013 in accordance with the Governmental Accounting Standards Board Statement No.34, Basic Financials Statements; Management's Discussion and Analysis for State and Local Governments. The intent of this document is to provide additional information on the District's historical financial performance as a whole in addition to providing a prospective look at revenue growth, operating expenses, and capital development plans. This discussion should be reviewed in conjunction with the audited financial statements for the fiscal year ended June 30, 2013 and accompanying notes to the financial statements to enhance one's understanding of the District's financial performance.

Financial Highlights

- Total assets increased by \$1.3 million over the prior fiscal year.
- Cash and cash equivalents decreased to a balance of \$8.7 million as of the end of the year.
- Net patient accounts receivable decreased by \$825k for the year.
- There was a net increase in property, plant and equipment of \$17.3 million.
- There was an operating loss of \$(3.0) million as compared to 2012's loss of \$(10.6) million, an improvement of \$7.1 million.
- The operating margin as a percent of revenues was a negative (4.1%) as compared to the prior year of negative (14.2%).
- Operating expenses were 104% of total operating revenue as compared to the prior year of 114%.

Cash and Cash Equivalents

For the year ending June 30, 2013, the District's cash and cash equivalents totaled \$8.7 million.

Assets Limited as to Use

For the year ending June 30, 2013, the District's assets limited as to use included the following: \$10.6 million for the bond project fund; \$1.8 million for the 2007 revenue bonds; and \$9.4 million in cash with the County Treasury. The District's investment funds and general obligation funds are deposited with Cal Trust and Wells Capital Management, respectively, in accounts independent from operating funds.

Other Receivables

Items totaling \$6.9 million are outstanding from government agencies as of the end of fiscal year 2013: (1) a receivable in the amount of \$0.9 million for the State's "meaningful use" program; (2) a receivable for PPS reconciliations for the rural health clinics in the amount of \$1.2 million; and (3) a receivable for \$3.1 million for Medi-Cal Managed Care supplemental payments; and (4) a receivable of \$1.7 million for the Fee-for-Service IGT program.

TULARE REGIONAL MEDICAL CENTER

Management's Discussion and Analysis
June 30, 2013

Inventory

The annual physical inventory, along with operational changes, resulted in a \$211k decrease in the inventory value as of June 30, 2013 over the prior year.

Net Patient Accounts Receivable

The net patient accounts receivable decreased in fiscal year 2013 by \$825k. This was due to the overall reduction in volumes from the prior year.

Capital Assets

During the year, the District had a net increase in property, plant and equipment of \$17.3 million. The increase is due mainly to \$20.1 million expended from general obligation bond funds for the new Tulare Regional Medical Center tower construction.

Other significant additions during fiscal year 2013 were: (1) \$255k for Radiology Information Systems; (2) \$822k for design of a future medical tower on the District's hospital campus and; (3) \$167k for various other major medical equipment purchases. Offsetting these amounts was depreciation in the amount of \$4.0 million.

Volumes

For the year ended June 30, 2013, acute patient days were 18,310, a 13.1% decrease over the prior year. Med/Surg was down 14% from the prior year; ICU/post ICU was below the prior year by 13%; Obstetrics was down 7% from fiscal year 2012. A comparison to prior year showed admissions down 14%; surgeries down 11%; and rural health care clinic visits down 31%. Volumes in the ancillary services were generally below prior year levels by 8%.

Gross Patient Charges

The District charges are based on its established pricing structure for the services rendered. The charges are compared to local and regional healthcare facilities to ensure competitive market rates. A 6% increase in ancillary rates and a market-based increase in room rates were implemented in October, 2011. Daily inpatient service revenue was \$53.3 million, inpatient ancillary revenue was \$80.2 million and outpatient ancillary revenue was \$133.2 million for a total of \$266.7 million. This is a \$13.9 million decrease, or 4.9%, from the prior year.

Management's Discussion and Analysis June 30, 2013

Deductions from Revenue

Contractual allowances are computed deductions based on the difference between gross charges and the contractually agreed upon rates of reimbursement with third party government-based programs such as Medicare and Medi-Cal and other third party payers. Contractual adjustments (as a percentage of gross patient revenue) were 69.2% for the year, compared to 67.9% for the prior year. Deductions from revenue for charity care adjustments (calculated by the inability for patients to pay) decreased from \$3.0 million to \$2.6 million, or 1.0% of gross patient revenue. Deductions from revenue for bad debt expense were \$11.9 million or 4.5% of gross patient revenue.

Net Patient Service Revenue

Net patient services revenues are the resulting difference between gross patient charges and deductions from revenue, including charity and bad debt. Net patient service revenue for the year was \$67.6 million as compared to \$66.9 million for the prior year. This was an increase of \$720k, or 1.1%, over the prior year.

Operating Expenses

Total operating expenses were \$77.9 million for the twelve months compared to the prior year of \$85.2 million. Operating expenses decreased by 8% while operating revenues increased by 0.5%. Total operating expenses were 104% of total operating revenues as compared to 114% in the prior year.

For the twelve months, salaries and wages totaled \$26.7 million, or 36% of total operating revenue, compared to \$29.0 million, or 39% of total operating revenue during the last fiscal year.

Employee benefits totaled \$9.6 million, compared to \$11.0 million in the prior year. Medical insurance costs decreased by \$899k based on actual claims paid.

Contract labor and registry fees showed a slight increase of \$22k as compared to the prior year.

Professional fees increased from prior year by \$366k.

Supply costs for current year totaled \$11.6 million, or 15.5% of operating revenue, compared to \$12.2 million, or 16.3% in the prior year.

Purchased services totaled \$13.1 million or 17.4% of operating revenues, compared to \$15.0 million, or 20.2% in the prior year.

Summary

The District's operating loss from hospital operations this year was \$(3.0) million as compared to fiscal year 2012's loss of \$(10.6) million. The related operating margin was a negative (4.0)% of operating revenue for fiscal year 2013 as compared to a negative margin of (14.2)% in 2012.



INDEPENDENT AUDITOR'S REPORT

The Board of Directors
Tulare Regional Medical Center
Tulare, California

Report on the Financial Statements

We have audited the accompanying financial statements of Tulare Local Health Care District, (dba Tulare Regional Medical Center, or the District) which comprise the statement of net position as of June 30, 2013 and the related statements of revenues, expenses and changes in net position, and cash flows for the year then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the District's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion the financial statements referred to above present fairly, in all material respects, the financial position of the District as of June 30, 2013, and changes in its financial position and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

Other Matters - Uncertainties

As further discussed in Note 16 to the financial statements, in the previous year the District self-reported potential noncompliance concerns with a "Corporate Integrity Agreement" previously established with a regulatory agency. It is uncertain as to what action, if any, may be taken by the regulatory agency and how it may affect the District's financial position as of June 30, 2013. The District's financial statements as of June 30, 2013 do not include any financial impact from this self-reporting action. Our opinion is not modified with respect to that matter.

As further discussed in Note 16 to the financial statements, subsequent to year end the District's Board of Directors took action to stop two internal reviews of specific hospital operations of the District. It is unclear as to whether or not these reviews were properly authorized. Again, it is uncertain as to what, if any, financial ramifications the results of these reviews may have had to the financial position of the District as of June 30, 2013 if these reviews had been completed. Our opinion is not modified with respect to that matter.

As more fully described in Notes 13 and 17 to the financial statements, the District has incurred negative cash flows from hospital operations, and has materially exceeded the Tower project budget, and may be unable to meet its future financial obligations. These conditions raise substantial doubt about the District's ability to continue hospital operations in the future. The District's plans in regard to these matters are also described in Notes 13 and 17. The financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the possible inability of the District to continue hospital operations. Our opinion is not modified with respect to that matter.

Other Matters - Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 1 - 3 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context.

We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Alemanino LLP

Armanino^{LLP}

San Ramon, California

December 9, 2013

Statement of Net Position June 30, 2013

ASSETS

Current assets	
Cash and cash equivalents	\$ 8,657,613
Assets limited as to use available for current debt service	8,648,655
Patient accounts receivable, net of allowances	7,763,678
Other receivables and physician advances	7,305,939
Inventories	1,349,617
Prepaid expenses and deposits	976,027
Total current assets	34,701,529
Assets limited as to use, long term	15,177,000
Capital assets, net of accumulated depreciation	133,693,937
Bond issuance costs, net of accumulated amortization	1,289,694
Total assets	\$ 184,862,160
LIABILITIES AND NET POSITION	
Current liabilities	
Current maturities of debt borrowings	\$ 1,698,152
Accounts payable and accrued expenses	11,180,505
Accrued payroll and related liabilities	2,382,591
Estimated current third party payor settlements	1,101,828
Self-insurance program accrual	918,000
Total current liabilities	17,281,076
Deferred revenue	9,079,552
Debt borrowings, net of current maturities	103,256,666
Total liabilities	129,617,294
Net position	
Net investment in capital assets	40,621,937
Restricted, by bond indenture for debt service	2,143,763
Unrestricted	12,479,166
Total net position	55,244,866
Total liabilities and net position	\$ 184,862,160

Statement of Revenues, Expenses and Changes in Net Position For the Year Ended June 30, 2013

Operating revenues	
Net patient service revenue	\$ 67,624,586
Other operating revenue	7,302,491
Total operating revenues	74,927,077
Operating expenses	24 42 4 72 4
Salaries and wages	26,624,721
Employee benefits	9,575,495
Professional fees	9,132,574
Contract labor and registry	311,439
Supplies	11,632,935
Purchased services	13,060,524
Repairs and maintenance	310,416
Utilities and phone	1,438,533
Building and equipment rent	908,813
Insurance	605,835
Depreciation and amortization	4,025,809
Other operating expenses	315,715
Total operating expenses	77,942,809
Operating loss	(3,015,732)
Nonoperating revenues (expenses)	
District tax revenues	1,513,773
Investment income	101,961
Interest expense	(839,225)
Grants and contributions	247,812
Other income	683,011
Total nonoperating net revenues	1,707,332
Excess of expenses over revenues	(1,308,400)
District taxes related to general obligation bonds debt service	6,039,069
Increase in net position	4,730,669
Net position at beginning of the year	50,514,197
Net position at end of the year	\$ 55,244,866

Statement of Cash Flows For the Year Ended June 30, 2013

Cash flows from operating activities	
Cash received from patients and third-parties on behalf of patients	\$ 65,207,971
Cash received from operations, other than patient services	7,302,491
Cash payments to suppliers and contractors	(38,684,206)
Cash payments to employees and benefit programs	(37,063,346)
Net cash used in operating activities	(3,237,090)
Cash flows from noncapital financing activities	
District tax revenues	1,513,773
Non-capital grants, contributions and other	193,559
Net cash provided by noncapital financing activities	1,707,332
Cash flows from capital and related financing activities	
Net purchase of capital assets	(21,182,218)
District tax revenues for debt service	5,402,866
Principal payments on debt borrowings	(1,640,656)
Net cash used in capital financing activities	(17,420,008)
Cash flows from investing activities	
Net (purchase) or sale of investments	14,336,004
Interest and dividends received from investments	101,961
Net cash provided by investing activities	14,437,965
Net decrease in cash and cash equivalents	(4,511,801)
Cash and cash equivalents at beginning of year	13,169,414
Cash and cash equivalents at end of year	\$ 8,657,613

Statement of Cash Flows (continued) For the Year Ended June 30, 2013

Reconciliation of operating loss to net cash provided	
by operating activities	
Operating loss	\$ (3,015,732)
Adjustments to reconcile operating loss to	
net cash provided by operating activities:	
Depreciation and amortization	4,025,809
Changes in operating assets and liabilities	
Patient accounts receivables	825,399
Other receivables	(4,065,093)
Inventories	211,397
Prepaid expenses and deposits	(51,870)
Accounts payable and accrued expenses	(1,104,949)
Accrued payroll and related liabilities	(863,130)
Estimated third party payor settlements	823,079
Self-insured program accrual	(22,000)
Net cash used in operating activities	<u>\$ (3,237,090)</u>

Notes to Financial Statements June 30, 2013

1. Organization and Significant Accounting Policies

Reporting entity

Tulare Local Health Care District (dba Tulare Regional Medical Center, e.g. the District) is a public entity organized under Local Hospital District Law as set forth in the Health and Safety Code of the State of California. The District is a political subdivision of the State of California and is generally not subject to federal or state income taxes. The District is governed by a five-member Board of Directors, elected from within the District's geographical political divisions to specified terms of office. The District is located in Tulare, California and operates a 112 bed general acute care hospital facility, a home health agency, several rural health care clinics and other patient service programs. The District provides health care services primarily to individuals who reside in the local geographic area.

Basis of preparation

The District's financial statements are presented in accordance with the pronouncements of the Governmental Accounting Standards Board (GASB). For purposes of presentation, transactions deemed by management to be ongoing, major or central to the provision of health care services are reported as operational revenues and expenses. The financial statement presentation, required by GASB Statements No. 34, 37 and 38 provides a full accrual basis, comprehensive, entity-wide perspective of the District's assets, results of operations and cash flows. The District follows the "business-type activities" reporting requirements of GASB Statement No. 34.

Effective July 1, 2012, the District adopted GASB No. 62, Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements, which brings the top category of authoritative governmental accounting and financial reporting literature together into a single publication. This GASB pronouncement did not have a significant impact on the District's June 30, 2013 financial statements.

Effective July 1, 2012, the District adopted GASBS No. 63, Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position, which establishes guidance for reporting deferred outflows of resources, deferred inflows of resources, and net position in a statement of financial position. This GASB pronouncement did not have a significant impact on the District's June 30, 2013 financial statements.

Management's discussion and analysis

GASB Statement 34 requires that financial statements be accompanied by a narrative introduction and analytical overview of the District's financial activities in the form of "management's discussion and analysis" (MD&A). This analysis is similar to the analysis provided in the annual reports of organizations in the private sector.

Notes to Financial Statements June 30, 2013

1. Organization and Significant Accounting Policies (continued)

Use of estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and cash equivalents

The District considers cash and cash equivalents to include certain investments in highly liquid debt instruments, when present, with an original maturity of a short-term nature or subject to withdrawal upon request.

<u>Investments</u>

Investments in participating interest-earning investment contracts are recorded at amortized cost, which approximates fair value for these investments, and all other investments are stated at fair value in the statements of net assets based upon published market quotations, where available. Investment income or loss (including realized gains and losses on investments, interest and dividends) and unrealized gains and losses on investments are reported in the statement of revenues, expenses and changes in net assets.

Investments held by the District are included within assets limited as to use as of June 30, 2013.

The District invests in various investment securities including corporate bonds, government securities and US treasury notes. Due to the level of risk associated with certain investment securities, it is at least reasonably possible that changes in the values of investment securities will occur in the near term and such changes could materially affect the amounts reported in the accompanying financial statements.

Patient accounts receivable

Patient accounts receivable consist of amounts owed by various governmental agencies, insurance companies and private patients. The District manages its receivables by regularly reviewing the accounts, inquiring with respective payer's as to collectability and providing for allowances on their accounting records for estimated contractual adjustments and uncollectible accounts.

Inventories

Inventories are consistently reported from year to year at cost determined by average costs and replacement values which are not in excess of market. The District does not maintain levels of inventory values such as those under a first-in, first out or last-in, first out method.

Notes to Financial Statements June 30, 2013

1. Organization and Significant Accounting Policies (continued)

Assets limited as to use

Assets limited as to use include amounts designated by the Board of Directors for the replacement or purchases of capital assets, amounts required for future bond obligations and other specific purposes, and amounts held by trustees under specified agreements. See footnote 8 for the composition of assets limited as to use at June 30, 2013.

Capital assets

Capital assets are stated at cost when purchased or constructed, or, for donated property, at the asset's estimated fair value at the time the donated property is received. Depreciation is provided using the straight-line method over the assets' estimated useful lives ranging from 5 to 30 years. Depreciation for tenant improvements is provided using the straight-line method over the shorter of the assets estimated useful life or the lease term. Whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recovered, the District, using its best estimates and projections, reviews for impairment the carrying value of long-lived identifiable assets to be held and used in the future. Any impairment losses identified are recognized when determined. Recoverability of assets is measured by comparison of the carrying amount of the asset to the net undiscounted future cash flows expected to be generated from the asset. If the future undiscounted cash flows are not sufficient to recover the carrying value of the assets, the assets carrying value is adjusted to fair value. As of June 30, 2013, the District has determined that no capital assets are significantly impaired; refer to Footnote 13 Commitments and Contingencies, for discussion of current status of construction in progress.

Bond issue costs

Bond issue costs are comprised of deferred financing cost of the issuance of revenue and general obligation bonds. Amortization of these issuance costs is computed by the straight-line method over the life of the repayment agreements. For current and advance refundings which result in defeasance of debt, the difference between the reacquisition price and the net carrying amount of the old debt, together with any unamortized deferred financing costs, is deferred and amortized over the remaining life of the old debt or the life of the new debt, whichever is shorter, in accordance with GASB 23. Amortization expense was \$161,626 for the year ended June 30, 2013.

Compensated absences

The District's employees earn paid-time-off benefits at varying rates depending on years of service; Paid-time-off benefits accumulate up to a specified maximum level. Employees are paid for both accumulated vacation and other accumulated paid time off benefits if they leave either upon termination or before retirement. Accrued paid time off liabilities as of June 30, 2013 were \$1,432,055.

Notes to Financial Statements June 30, 2013

1. Organization and Significant Accounting Policies (continued)

Risk management

The District is exposed to various risks of loss from torts; theft of, damage to, and destruction of assets; business interruption; errors and omissions; employee injuries and illnesses; natural disasters; and medical malpractice. Commercial insurance coverage is purchased for claims arising from such matters. In the case of employee health coverage, the District is self-insured for those claims and is discussed further in the footnotes.

Net position

Net position is comprised of the following three components:

Net investment in capital assets: consists of capital assets (both restricted and unrestricted), net of accumulated depreciation and reduced by the outstanding principal balances of any debt borrowings that were attributable to the acquisition, construction, or improvement of those capital assets.

Restricted net assets: consist of externally designated constraints placed on those net assets by creditors (such as through debt covenants), grantors, contributors, law or regulations of other governments or government agencies, or law or constitutional provisions or enabling legislation.

Unrestricted net assets: consists of net assets that do not meet the definition or criteria of the previous two categories.

Net patient service revenues

Net patient service revenues are reported in the period at the estimated net realized amounts from patients, third-party payors and others including estimated retroactive adjustments under reimbursement agreements with third-party programs. Normal estimation differences between final reimbursement and amounts accrued in previous years are reported as adjustments of current year's net patient service revenues.

Charity care

The District accepts all patients regardless of their ability to pay. A patient is classified as a charity patient by reference to certain established policies of the District. Essentially, these policies define charity services as those services for which no payment is anticipated. Because the District does not pursue collection of amounts determined to qualify as charity care, they are not reported as net patient service revenues. Services provided are recorded as gross patient service revenues and then written off entirely as an adjustment to net patient service revenues.

Notes to Financial Statements June 30, 2013

1. Organization and Significant Accounting Policies (continued)

District tax revenues

The District receives approximately 2% of its financial support from property taxes. These funds are used to support operations and meet required debt service agreements. They are classified as non-operating revenue as the revenue is not directly linked to patient care. Property taxes are levied by the County on the District's behalf during the year, and are intended to help finance the District's activities during the same year. Amounts are levied on the basis of the most current property values on record with the County. The County has established certain dates to levy, lien, mail bills, and receive payments from property owners during the year. Property taxes are considered delinquent on the day following each payment due date.

Deferred revenue

The District records property tax revenues received in support of its general obligation bonds to the extent of the current year's debt service associated with these bonds. Property taxes and other funds received on behalf of the general obligation bonds that exceed the current year's debt service payments are recorded as deferred revenue, to be recognized in future years as the debt service payments become due.

Grants and contributions

From time to time, the District receives grants from various governmental agencies and private organizations. The District also receives contributions from related foundation and auxiliary organizations, as well as from individuals and other private organizations. Revenues from grants and contributions are recognized when all eligibility requirements, including time requirements are met. Grants and contributions may be restricted for either specific operating purposes or capital acquisitions. These amounts, when recognized upon meeting all requirements, are reported as components of the statement of revenues, expenses and changes in net position.

Operating revenues and expenses

The District's statement of revenues, expenses and changes in net assets distinguishes between operating and nonoperating revenues and expenses. Operating revenues result from exchange transactions associated with providing health care services, which is the District's principal activity. Operating expenses are all expenses incurred to provide health care services, other than financing costs. Nonoperating revenues and expenses are those transactions not considered directly linked to providing health care services.

Notes to Financial Statements June 30, 2013

2. Cash - Custodial Credit Risk

As of June 30, 2013, the District had deposits invested in various financial institutions in the form of operating cash and cash equivalents amounting to \$8,657,613. All of these funds were held in deposits, which are collateralized in accordance with the California Government Code (CGC), except for \$250,000 per account that is federally insured.

Under the provisions of the CGC, California banks and savings and loan associations are required to secure the District's deposits by pledging government securities as collateral. The market value of pledged securities must equal to at least 110% of the District's deposits. California law also allows financial institutions to secure District deposits by pledging first trust deed mortgage notes having a value of 150% of the District's total deposits. The pledged securities are held by the pledging financial institution's trust department in the name of the District.

3. Investments

Interest rate risk

The District invests in various investment securities including corporate bonds, government securities and US treasury notes, which are classified as assets limited as to use.

Interest rate risk is the risk that changes in market rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment the greater the sensitivity of its fair value to changes in market interest rates. The District does not have any policies specifically addressing interest rate risk.

At June 30, 2013, scheduled maturities of fixed income securities consisted of the following:

Maturing in
Less than 1 year
1 year to 5 years

\$4,237,864 \$2,126,863

Credit risk

The District's credit rating risk is governed by Section 53601 of the California Government Code, which, among others, limits investments in money market mutual funds to those funds with the highest ranking by at least one of the national rating agencies and investments in corporate bonds are limited to those with a minimum ranking of A by at least one national rating agencies. The District did not hold any investments at June 30, 2013 that had ratings of less than A by national rating agencies. There are no investment limits on the securities of the U.S. Treasury as these investments are backed by the full faith and credit of the United States government.

Notes to Financial Statements June 30, 2013

3. Investments (continued)

Credit risk (continued)

The following is a summary of the credit quality distribution for securities with credit exposure as rated by Moody's Investor Service at June 30, 2013:

Aaa	\$5,509,572
A1	\$ 527,384
A2	\$ 327,771

Concentration of credit risk

The District diversifies its portfolio as required by the California Government Code. At June 30, 2013, more than 5 percent of the District's investments are invested in the following:

Freddie Mac fixed income

14%

4. Net Patient Service Revenues

The District has agreements with third-party payors that provide for payments to the District at amounts different from its established rates. A summary of the payment arrangements with major third-party payors follows:

Medicare

Payments for inpatient acute care services rendered to Medicare program beneficiaries are based on prospectively determined rates, which vary according to the patient diagnostic classification system. Outpatient services are generally paid under an outpatient classification system subject to certain limitations. The District is subject to cost reimbursable services in rural health care services. Filed cost reports are subject to final settlements determined after submission of the annual cost reports and audits thereof by the Medicare fiscal intermediary. At June 30, 2013, cost reports through June 30, 2008 have been final settled.

Medi-Cal

For traditional Medi-Cal (non-Medi-Cal managed care) services, payments for inpatient services rendered to patients are made based on reasonable costs while outpatient payments are based on pre-determined charge screens. The District is paid for cost reimbursement services at an interim rate with final settlement determined after submission of annual cost reports and audits thereof by Medi-Cal. At June 30, 2013, cost reports through June 30, 2010, have been final settled. Medi-Cal managed care services are paid on a pre-determined rate and are not subject to cost reimbursement.

Notes to Financial Statements June 30, 2013

4. Net Patient Service Revenues (continued)

Other

Payments for services rendered to other than Medicare and Medi-Cal patients are based on established rates or on agreements with certain commercial insurance companies, health maintenance organizations and preferred provider organizations which provide for various discounts from established rates.

Net patient service revenues summarized by service are as follows:

Daily hospital services	\$ 53,328,040
Inpatient ancillary services	80,189,279
Outpatient services	133,177,294
Gross patient service revenues	266,694,613
Less deductions from revenue	<u>(199,070,027</u>)
Net patient service revenues	<u>\$ 67,624,586</u>

Medicare and Medi-Cal revenue accounts for approximately 69% of the District's gross patient revenues. Laws and regulations governing the Medicare and Medi-Cal programs are extremely complex and subject to interpretation. As a result, there is at least a reasonable possibility that recorded estimates may change by material amounts in the near term as final settlements are determined.

5. Patient Accounts Receivable and Concentration of Credit Risk

The District grants credit without collateral to its patients and third-party payors. Patient accounts receivable from government agencies represent the only concentrated group of credit risk for the District and management does not believe that there are any credit risks associated with these governmental agencies. Contracted and other patient accounts receivable consist of various payors including individuals involved in diverse activities, subject to differing economic conditions and do not represent any concentrated credit risks to the District.

Concentrations of patient accounts receivable at June 30, 2013 are as follows:

Medicare	\$ 9,195,533
Medi-Cal and Medi-Cal managed care	13,428,087
Other third party payors	11,532,796
Self pay and other	4,070,132
Gross patient accounts receivable	38,226,548
Less allowances for contractual adjustments	
and bad debts	(30,462,870)
Net patient accounts receivable	\$ 7,763,678

Notes to Financial Statements
June 30, 2013

6. Charity Care and Community Benefit Expense

The District maintains records to identify and monitor the level of charity care and community service it provides. These records include: the amount of charges foregone, (based on established rates), for services and supplies furnished under its charity care and community service policies, the estimated cost of those services and supplies, and statistics quantifying the level of charity care as a percentage of expenses of the District as a whole. The following is a summary of the District's charity care and community benefit expense for the year ended June 30, 2013, in terms of services to the poor and benefits to the broader community:

Benefits for the poor	
Traditional charity care	\$ 2,595,214
Unpaid Medi-Cal and County indigent	
program charges	89,954,889
Total quantifiable benefits for the poor	92,550,103
Benefits for the broader community	
Unpaid Medicare program charges	62,117,426
Total quantifiable benefits for the broader community	62,177,426
Total quantifiable community benefits	<u>\$154,667,529</u>

7. Other Receivables

Other receivables as of June 30, 2013 were comprised of the following:

Advances to physicians	\$1,115,147
Tulare County property taxes	31,289
Net receivable from State disproportionate	
share and other programs	6,902,992
Grants receivable	58,441
Other receivables	396,227
Less allowance for doubtful accounts	<u>(1,198,157</u>)
	\$7,305,939

Advances to physicians are comprised of physician income guarantees and/or business loans to those physicians requiring assistance to begin a local practice. The District has entered into agreements with certain physicians whereby the District guarantees their income for a specified period of time. These agreements are structured so that if a physician maintains a practice in the area for a specified period of time, the income guarantee in excess of collections may be forgiven in compliance with all federal and State laws and regulations. The allowance for doubtful accounts is primarily attributed to three physician advances that are potentially uncollectible.

Notes to Financial Statements
June 30, 2013

8. Assets Limited as to Use

Assets limited as to use as of June 30, 2013 were comprised of the following:

Assets held under bond indenture agreements	
for construction projects	
US Treasury notes	\$ 3,504,207
US government agency securities	2,005,364
Corporate bonds	855,156
Money Market Funds	4,187,951
·	10,552,678
Assets held under bond indenture agreements	
Money market funds	1,813,539
Cash in County Treasury	9,409,776
Bond rebate receivable	<u>704,522</u>
	11,927,837
Assets held as part of municipal lease obligation	1,345,140
Assets field as part of mullicipal lease congation	1,575,170
Total	23,825,655
Less restricted trust funds available for current	
debt service	(8,648,655)
Assets limited as to use - long-term	\$15.177.000

9. Capital Assets

Capital assets as of June 30, 2013 were comprised of the following:

	Balance at June 30, 2012	Transfers / Additions	Reclasses / Retirements	Balance at June 30, 2013
Land and land improvements Buildings and improvements	\$ 3,203,301 43,506,831	\$ - 29,669	\$ (420)	\$ 3,202,881 43,536,500
Equipment	36,155,372	4,030,299	(4,962,947)	35,222,724
Construction-in-progress	<u>84,717,901</u>	22,174,347	(89,155)	106,803,093
Totals at historical cost	167,583,405	<u>26,234,315</u>	(5,052,522)	188,765,198
Less accumulated depreciation	n for			
Land and land improvements	(885,326)	(89,622)	-	(974,948)
Buildings and improvements	(25,070,188)	(1,553,963)	-	(26,624,151)
Equipment	(25,251,984)	(2,220,178)		(27,472,162)
Total accumulated				
depreciation	(51,207,498)	(3,863,763)	-	(55,071,261)
Capital assets, net	<u>\$116,375,907</u>	\$22,370,552	<u>\$(5,052,522)</u>	<u>\$133,693,937</u>

TULARE REGIONAL MEDICAL CENTER Notes to Financial Statements June 30, 2013

10. Debt Borrowings

As of June 30, 2013 debt borrowings were as follows:

General obligation bonds, election of 2005, series A (2007); interest at 4.00% to 4.65% due semiannually; principal due in annual amounts ranging from \$15,000 on August 1, 2012 to \$2,000,000 due on August 1, 2037; collateralized by tax revenues.	\$ 14,985,000
Series 2007 refunding revenue bonds; interest at 3.75% to 5.20% due semiannually; principal due in annual amounts ranging from \$405,000 due on November 1, 2008 to \$1,210,000 due on November 1, 2032; collateralized by District revenues.	15,710,000
General obligation bonds, election of 2005, series B (2009); interest at 6.45% to 8.00% due semiannually; principal due in annual amounts ranging from \$100,000 on August 1, 2014 to \$7,240,000 due on August 1, 2039; collateralized by tax revenues.	70,000,000
Note payable to a financial institution; interest at 1.913%; principal and interest payments of \$104,938 Payable monthly through December, 2016;	
collateralized by equipment.	4,259,818
Total debt borrowings	104,954,818
Less current maturities of debt borrowings	(1,698,152)
	\$103,256,666

Future interest due and principal maturities of debt borrowings, at June 30, 2013 are as follows:

	Interest	Principal	<u>Total</u>
2014	\$ 6,950,504	\$ 1,698,152	\$ 8,648,656
2015	6,902,538	1,861,080	8,763,618
2016	6,844,953	2,044,454	8,889,407
2017	6,778,119	1,591,132	8,369,251
2018	6,719,891	1,135,000	7,854,891
2019 - 2023	32,905,110	8,560,000	41,465,110
2024 - 2028	29,642,965	15,260,000	44,902,965
2029- 2033	24,562,336	25,410,000	49,972,336
2034 - 2038	17,429,274	33,540,000	50,969,274
2039 - 2040	8,644,839	13,855,000	22,499,839
	<u>\$147,380,529</u>	<u>\$104.954.818</u>	<u>\$252,335,347</u>

TULARE REGIONAL MEDICAL CENTER Notes to Financial Statements

June 30, 2013

10. Debt Borrowings (continued)

The Series 2007 refunding revenue bonds require that the District maintain a long-term debt service coverage ratio of not less than 1.25 times. For the fiscal year ended June 30, 2012, the District did not meet this requirement. As a result, the District engaged the services of a management consultant as set forth in the Bond Indenture. The District continues to work on operational improvements set forth by the management consultant, as well as those identified internally. For the year ended June 30, 2013, the District did meet the debt service coverage ratio requirement.

The interest payments for the general obligation bonds issued in 2009 are subsidized over the life of the issue by a U.S. Government stimulus program entitled "Build America Bonds" by approximately 32%, leaving the tax revenues to cover approximately 68%.

In March, 2013, Fitch Ratings downgraded the \$15.7 million refunding revenue bonds, series 2007 to a "B+" from a "BB+" and revised the rating outlook from "stable" to "negative" (\$460,000 principal had been paid on November I, 2012 to bring the outstanding balance to \$15,710,000 from June 30, 2012). Some of the "key rating drivers" were (1) continued financial weakening; (2) large operating losses; (3) weak balance sheet; (4) construction project delays; and (5) recent management turnover. The rating agency also cited the "sharp turn in fiscal 2012" in operating profitability and a "dramatic decline in unrestricted liquidity beginning fiscal 2011 followed by material deterioration in profitability and debt metrics in fiscal 2012". The next rating review will not take place until the first quarter of 2014.

11. Employees' Retirement Plans

The "Tulare Local Hospital District Money Purchase Pension Plan" (the Retirement Plan) is a defined contribution money purchase pension plan established by the District to provide retirement benefits for substantially all District employees. The annual contribution to the Retirement Plan by the District is determined based on a percentage of the compensation paid to eligible employees and varies for each participant based on their respective years of employment at the District. In order to be eligible to participate, the District has required that employees agree to contribute to a deferred compensation arrangement. Total amounts contributed by the District to the Retirement Plan for the year ended June 30, 2013 was approximately \$568,000. The required employee contributions have been treated as contributed under a deferred compensation arrangement under the Internal Revenue Code Section 457.

Notes to Financial Statements June 30, 2013

11. Employees' Retirement Plans (continued)

The District has also established the "Tulare Local Hospital District Social Security Alternative Savings Plan" (the SSA Plan) to provide retirement benefits to employees as an alternate method of pension and other benefit opportunities similar to those provided by Social Security. The SSA Plan is available to all employees of the District who would otherwise have been covered by Social Security. The District and employee level of contributions to the SSA Plan depend on the employees' most recent date of employment and differentiate between those employed prior to 1987 and later years, based on certain regulations.

Originally, the employee contributions to the SSA Plan were treated as contributions to a deferred compensation arrangement under the Internal Revenue Code Section 457. Effective January 1, 1987, the employee contributions have been treated as "pick-up" contributions under the Internal Revenue Code Section 414(h)(2). The District's contribution to the SSA Plan for the year ended June 30, 2013 was approximately \$1,017,000.

12. Post -Retirement Benefits

In years past, the District's SSA Plan provided for post-retirement health care benefits for employees who retire on or after age 55 and prior to July 31, 1998, with at least five years of service at the District. Under this program, the District reimburses eligible health care expenses for the retirees. Health care benefits are provided until the retiree is eligible for the Medicare program.

The District was also required to purchase Part A coverage under the Medicare Program for those eligible retirees who were hired between January 1, 1983 and April 1, 1986. During that period, and under the conditions of the SSA Plan, the District was not required to withhold social security payroll taxes from its employees in order to fund their respective Medicare future benefit. Regulations changed effective April 1, 1986, which required the funding to commence again for any new hire after the effective date. As a result of this "three-year" period, the SSA Plan requires the District provide Part A coverage for these employees upon acceptance into the Medicare Program. The District is not required to purchase Part A coverage if the retiree is eligible for the Medicare Program either through credits gained before January 1, 1983, employment credits at another place of employment, or eligibility through the retiree's current or former spouse.

The District has "board-designated" funds to meet these obligations. At June 30, 2013, the board funded post-retirement health care benefit liability, as determined by actuarial studies, was approximately \$73,000. The discount rate used in determining the accumulated post-retirement health care benefit cost was 7% for each year. The assumed health care cost trend rate was 7.5% in 1998, grading down to 5% in 2003 and beyond. The District has amended its benefit plans to redesign future benefits to exclude post-retirement obligations.

Notes to Financial Statements
June 30, 2013

13. Commitments and Contingencies

Construction-in-progress

As of June 30, 2013, the District had recorded \$106,803,093 as construction-in-progress representing cost capitalized of \$103,234,298 for the "Tower Project" and \$3,568,795 for other various remodeling, major repair, equipment installation and other expansion projects on the District's premises. The District capitalizes related interest expense, net of interest earnings on capital related funding, to the District expansion project. Estimated costs to complete all projects as of June 30, 2013 are approximately \$28 million, of which \$15.7 million pertains to the contract with the general contractor.

As to the ongoing construction of the four-story, 115,000 square foot "Tower Project" specifically, the District entered into a construction contract around March, 2010 and construction began around May, 2010. The original completion date was December, 2012, however due to delays caused by several setbacks (as more fully described in footnote 14), the new completion date is now projected for 2015.

As of June 30, 2013, there is approximately \$10.6 million remaining in the bond project fund. As of December 9, 2013, it is uncertain if the District has the remaining funds available to complete the "Tower Project". In addition, due to the present financial condition of the District, it is uncertain whether or not the District has the financial leverage to obtain additional financing in order to finance the completion of the "Tower Project".

Operating leases

The District leases various equipment and facilities under operating leases expiring at various dates. Total building and equipment rent expense for the year ended June 30, 2013 was \$908,813. Future minimum lease payments for the succeeding years under operating leases as of June 30, 2013, which have initial or remaining lease terms in excess of one year are not considered material.

Employee health insurance

The District provides health benefits to employees through a self-funded plan financed by the District operations. Estimated liabilities are recorded for claims which most likely have been incurred but are not yet reported for claims processing and payment (IBNR). As of June 30, 2013, the IBNR was estimated at \$883,000. Commercial insurance is provided for "stop-loss" coverage for significant claims.

Notes to Financial Statements
June 30, 2013

13. Commitments and Contingencies (continued)

Workers compensation program

The District is a participant in the Association of California Hospital Districts Alpha Fund (the Fund) which administers a self-insured worker's compensation plan for participating hospital employees of its member hospitals. The District pays premiums to the Fund which are adjusted annually. If participation in the Fund is terminated by the District, the District would be liable for its share of any additional premiums necessary for final disposition of all claims and losses covered by the Fund.

Health Care Reform

The health care industry is subject to numerous laws and regulations of federal, state and local governments. These laws and regulations include, but are not necessarily limited to, matters such as licensure, accreditation, government health care program participation requirements, reimbursement for patient services, and Medicare and Medi-Cal fraud and abuse. Government activity has increased with respect to investigations and allegations concerning possible violations of fraud and abuse statutes and regulations by health care providers. Violations of these laws and regulations could result in expulsion from government health care programs together with the imposition of significant fines and penalties, as well as significant repayments for patient services previously billed. Management believes that the District is in compliance with fraud and abuse as well as other applicable government laws and regulations. While no material regulatory inquiries have been made, compliance with such laws and regulations can be subject to future government review and interpretation as well as regulatory actions unknown or unasserted at this time.

14. Litigation

Construction delays

Around March, 2010, the District entered into a construction contract with Harris Construction Co., Inc. (Harris) for the construction of the "Tower Project" (the Project). Construction began around May, 2010 and is presently ongoing. The initial completion date was approximately December, 2012. In early 2012, the District was informed by Harris that there were issues involving delaminated concrete within the Project that required remediation efforts. Although the issue is in process of being resolved, it has caused delays in the completion of the Project, and the estimated completion date has now been moved to 2015. Presently, the Project completion date as required by the Project is March 15, 2013 and due to the failure of Harris to achieve Project completion by that date, as required by the contract, the District has elected to assess liquidated damages (at the contractual rate of \$10,000 per day) until completion is achieved, but is not withholding those liquidated damages from monthly progress billings.

Notes to Financial Statements
June 30, 2013

14. Litigation (continued)

Construction delays (continued)

It is the position of the District that Harris remains 100% responsible for the concrete issue which has caused substantial delay to the Project. Harris has advised the District that it believes other delays were caused by alleged errors, omissions and deficiencies in the Project plans and drawings which have resulted in additional costs and other related impacts for Harris. The District disputes many of these claims. As of the date of these financial statements, Harris (or those associated with Harris in the Project) has not asserted any claim against the District and it is uncertain if they will. If action is taken and an unfavorable outcome results, it is possible that damages could be material to the financial position of the District. Due to the uncertainty of any action at this time, it is impractical to determine a possible loss or range of loss to the District.

Architect issues

During 2007 the District engaged an initial architect for the Project for certain design and construction administration services. Around June, 2012, the District removed the initial architect from the Project and enlisted the services of another architect as a replacement. Construction activities are currently proceeding and may not be complete until 2015. As of the date of this report, it is uncertain as to whether or not the District will assert any claim against the former architect or whether the former architect will pursue a claim against the District. Due to the uncertainty of any action at this time, it is impractical to determine a possible loss or range of loss to the District.

Public Records Act

On June 8, 2012, Harris served the District with a Public Records Act request. The request generally sought all financial documents showing sums on account and all expenditures made for the Project from 2005 through June 30, 2012, as well as other financial information requests. The District began responding to the requests, however on July 23, 2012, Harris filed a Petition for Writ of Mandate to Enforce Public Records Act. A Court hearing was conducted on February 22, 2013, and on May 17, 2013 the judge issued an order whereby the Writ filed by Harris was denied, however the order indicated that the District had delayed in providing Harris with some public documents. On July 3, 2013, Harris filed an untimely motion for attorney's fees and costs totaling \$138,861. The District then filed an opposing motion to strike all fees and costs. The hearing for both motions occurred on September 10, 2013, and as of December 9, 2013, no ruling has been issued by the court. Due to the uncertainty of the decision of the Court, it is impractical to determine a possible loss or range of loss to the District. Legal counsel for the District has estimated a possible loss could be between \$-0- and \$138,861.

Notes to Financial Statements
June 30, 2013

14. Litigation (continued)

Other litigation

The District is involved in numerous other litigation matters which generally arise in the normal course of doing business. After consultation with legal counsel, management estimates that these other matters existing as of June 30, 2013 will be resolved without material adverse effect on the District's future financial position, results from operations or cash flows.

15. Related Party Transactions

The Tulare Hospital Foundation (the Foundation), has been established as a nonprofit public benefit corporation under the Internal Revenue Code Section 501(c)(3) to solicit contributions on behalf of the District. Substantially all funds raised except for funds required for operation of the Foundation, are distributed to the District or held for the benefit of the District. The Foundation's funds, which represent the Foundation's unrestricted resources, are distributed to the District in amounts and in periods determined by the Foundation's Board of Trustees, who may also restrict the use of funds for District property and equipment replacement or expansion or other specific purposes. The Foundation, as specified in their mission statement, contributes annually, both in service and in funding, towards the healthcare of the residents of the Tulare healthcare service area, including the District. The Tulare District Hospital Auxiliary (the Auxiliary) is a similar non-profit organization established to help solicit contributions for the District and also donates funds towards the healthcare effort of the Tulare area, including the District.

16. Uncertainties

In November, 2012, the District's legal counsel had the District self-report to the Office of Inspector General (OIG) certain concerns associated with an existing "Corporate Integrity Agreement" (CIA) which had been in effect between the District and the OIG since July 20, 2009. On April 3, 2013, the District received a letter from the OIG stating that "it appears that Tulare was in compliance with its reporting requirements of the CIA during its third Reporting Period", However, any self-reporting by the District after June 30, 2012, including the report mentioned above, would be during the fourth "Reporting Period".

On October 7, 2013, the District received a letter from the OIG with the following: "it appears that Tulare was in compliance with the reporting requirements of its CIA during its fourth Reporting Period." The June 30, 2013 financial statements do not contemplate any material financial impact as a result of the November 2012 self-report.

In October, 2012, District management engaged an independent law firm to conduct an internal review into certain alleged misconduct within hospital operations. The review had just begun when in December, 2012, new general legal counsel recommended suspension of the process pending a review of the Board's authority for such action. In January, 2013, the newly elected Board of Directors ratified the suspension of the review on the basis of lack of Board authority until such time as the scope of the review could be identified and approved.

Notes to Financial Statements June 30, 2013

16. Uncertainties (continued)

Also in October, 2012, the Board of Directors authorized a "request for proposal" process to engage an independent accounting firm to review specific concerns related to the "bond financed" tower project. In January, 2013 the newly-elected Board of Directors decided not to engage an accounting firm to review specific concerns about the "bond financed" tower project due to the fact that they felt other actions were taken in its place. Previously the board engaged a Certified Public Accounting firm to complete three separate Agreed-Upon Procedure attest engagements related to general obligation bond expenditures. These audits did not identify any significant findings.

• Generally accepted accounting principles require that loss contingencies be properly disclosed and reflected in the financial statements, however, it is not possible to disclose what outcome, if any, these aforementioned "uncertainties" may have on the financial position of the District as of June 30, 2013.

For the year ended June 30, 2013, management does not believe that there is any material impact on the financial position of the District as a result of the aforementioned "uncertainties".

17. Continued Hospital Operations

The District continues to suffer material operating losses from hospital operations through the date of these financial statements. District management is striving to improve operations through measured action plans. The ultimate success of these plans will depend primarily on the ability of the District's management to either operate the hospital with sufficient cash flows to meet their obligations in the normal course of operations or resolve the situation through other actions.

District management has developed an operational improvement plan which it believes will result in continued cash flow improvements. The plan includes revenue, service line and cost containment components. The financial statements do not include any adjustments relating to the recoverability and classification of asset amounts or the amounts and classification of liabilities that might be necessary should the District be unable to continue hospital operations.

18. Subsequent Events

The District has evaluated subsequent events through December 9, 2013, the date the financial statements were available to be issued. No subsequent events have occurred that would have a material impact on the presentation of the District's financial statements.

EXHIBIT 3

EXHIBIT 5



Tulare Regional Medical Center 2016 Achievement Award

For Meeting or Exceeding the Healthy People 2020 Goal for Low-Risk, First-Birth Cesarean Deliveries

To receive this award, a California hospital must achieve a Cesarean section (C-section) rate of 23.9 percent or lower for low-risk, first-birth deliveries. The award is based on 2015 data reported by hospitals to the Office of Statewide Health Planning and Development and the California Department of Public Health-Vital Records.

Diana S. Dooley

Secretary, California Health and Human Services Agency

EXHIBIT 6

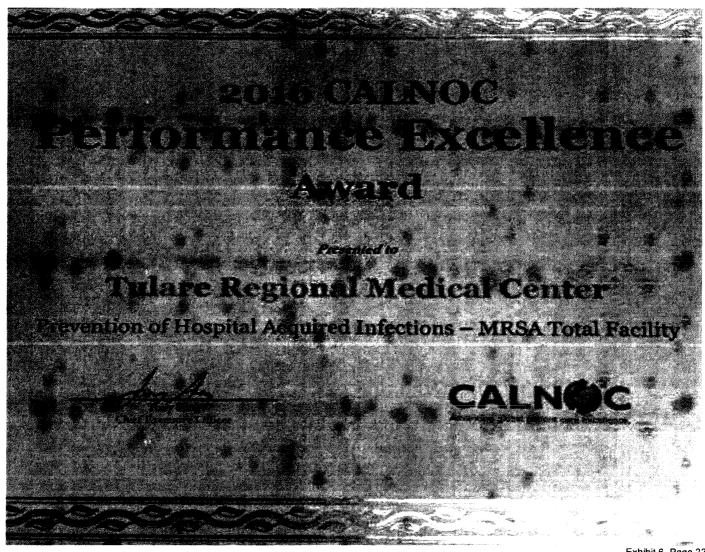


Exhibit 6, Page 225

EXHIBIT 7

OUR INVESTMENT IN TULARE

October 26, 2016



Exhibit 7, Page 227

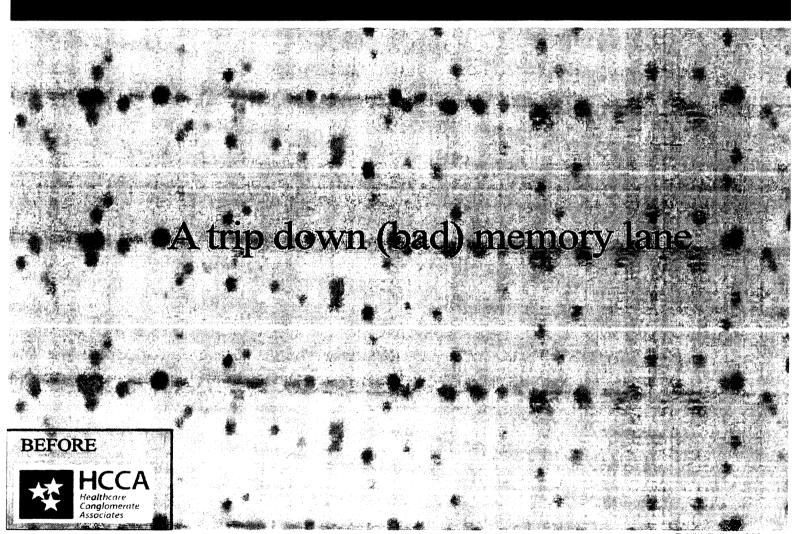


Exhibit 7, Page 228

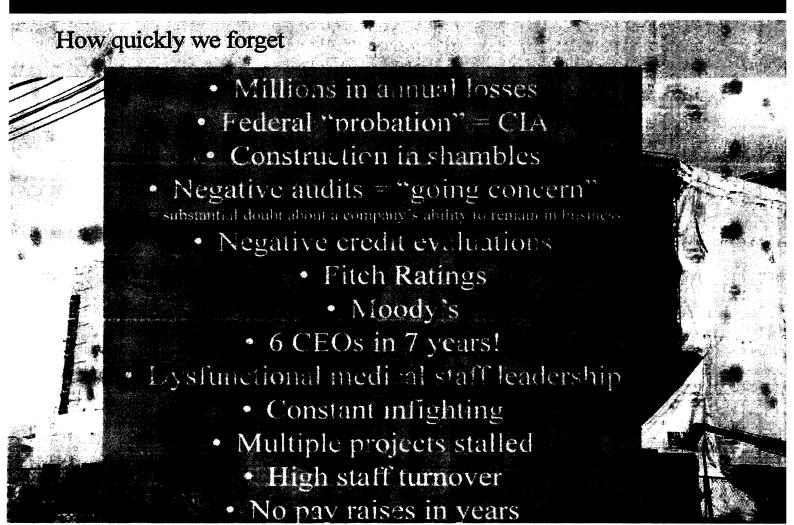


Exhibit 7, Page 229

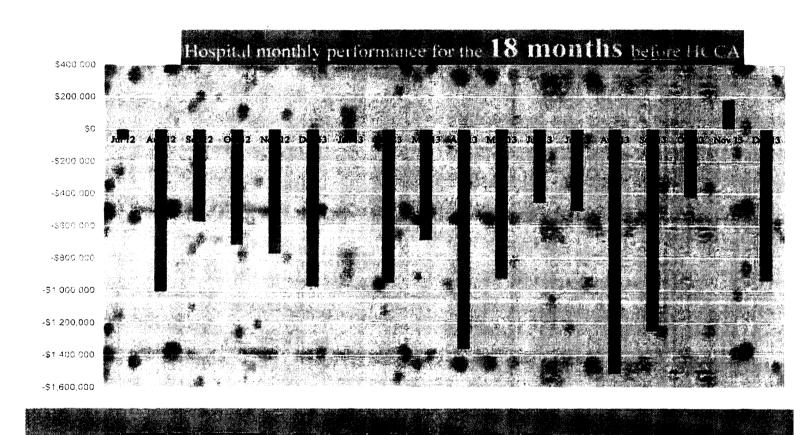


Exhibit 7, Page 230

Prof. Loss from Operations (Audited) for the 12 years before HCCA

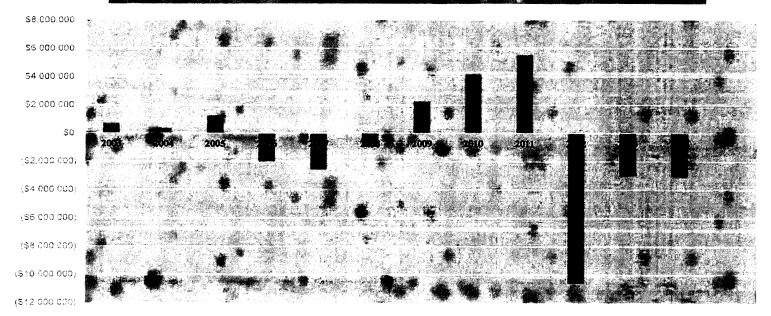
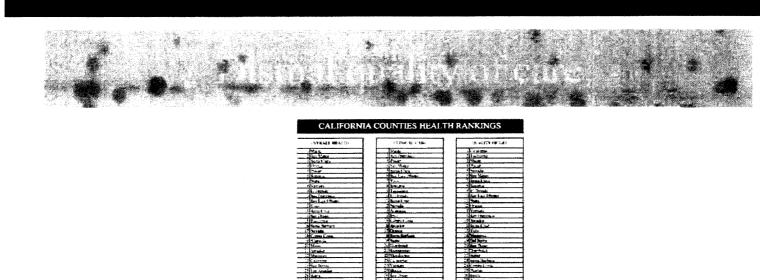




Exhibit 7, Page 231



Exhibit 7, Page 232



We deserve better than this!

Overall Clinical Quality health Care of life 51/57 49/57 56/57

HCCA was asked to rescue the hospital from extinction



Manager's duties (abbreviated)

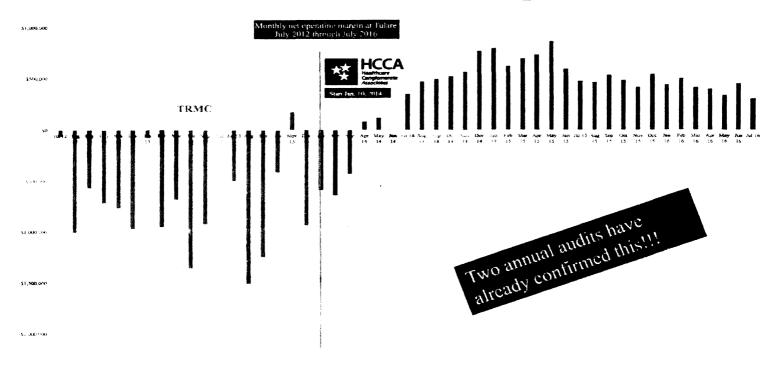
- · Provide a Chief Executive Officer
- · Employer of hospital employees
- Assist in the implementation of patient safety, quality, and performance measurement programs
- Recommend standard formats for all charts, invoices, and other forms used in operations
- Provide advice and direction in overseeing the revenue cycle management
- · Prepare annual budgets
- · Assist in billing and collection of receivables
- Oversight of payables
- · Assist in negotiating and securing operating contracts
- · Oversight of purchasing systems
- · Marketing
- Oversight of medical records and development of department strategies and systems and planning
- Construction advice and recommendations
- Etc...



Three years later...

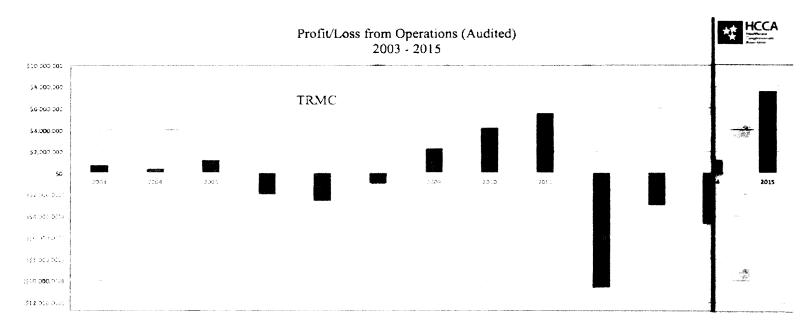


30 consecutive months of profits





How about the last 12 years in comparison





FOUR consecutive <u>positive reviews</u> and <u>upgrades</u> by two national credit rating agencies



Fitch Ratings Inc. is one of the "Big Three credit rating agencies", the other two being Moody's and Standard & Poor's. It is one of the three nationally recognized statistical rating organizations (NRSRO) designated by the U.S. Securities and Exchange Commission in 1975



Moody's Investors Service. ... Moody's Investors Service provides international financial research on bonds issued by commercial and government entities and, with Standard & Poor's and Fitch Group, is considered one of the Big Three credit rating agencies.



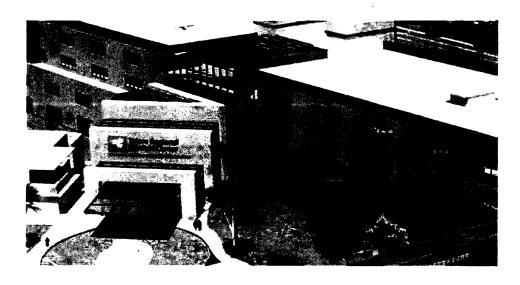
A 10 year construction mess fixed and the building enclosed...even after the bond money ran out!







Now we have the ability to complete our tower without any bond or tax increase — something that was not possible even 6 months ago





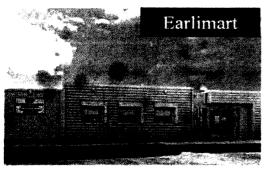
An inherited Corporate Integrity Agreement (CIA) <u>successfully completed</u>



OIG negotiates corporate integrity agreements (CIA) with health care providers and other entities as part of the settlement of Federal health care program investigations arising under a variety of civil false claims statutes. Providers or entities agree to the obligations, and in exchange, OIG agrees not to seek their exclusion from participation in Medicare, Medicaid, or other Federal health care programs

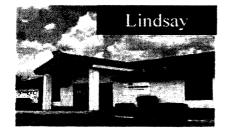


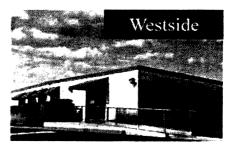
Opened two new clinics and expanded hours in two others













Cutting-edge information technology system implemented



Purchased at below market rates and implemented successfully



Telemedicine Stroke service implemented





Now, stroke patients can be treated by a top neurologist right here in Tulare!



Outpatient Registered Dietician service implemented



A registered dietitian (RD) or registered dietitian nutritionist (RDN), is a dietitian who meets all of a set of special academic and professional requirements, including: the completion of a bachelor's degree with an accredited nutrition curriculum.





WHAT IS AN RD?

"the food and nutrition experts who can translate the science of nutrition into practical solutions for healthy living."

Education.

-Undergraduate degree

-I year of chemistry

-Programmy

-Brochemistry

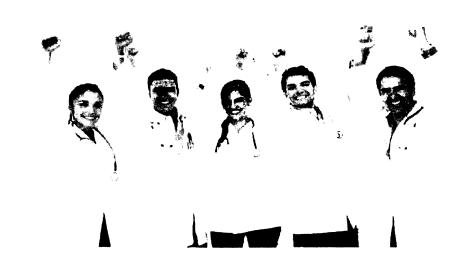
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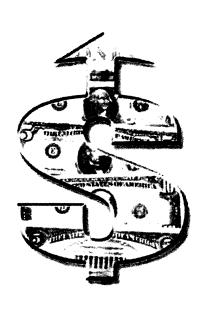
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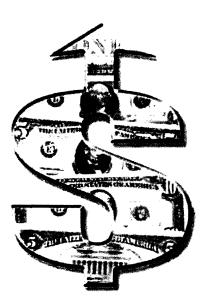
Engaged and well functioning medical staff leadership





Two across the board pay raises for our wonderful employees









How much does this cost the District???



\$0!!!

IN FACT, IN YEAR ONE ALONE, THE DISTRICT ACTUALLY EARNED OVER \$7,000,000 ABOVE AND BEYOND ANY FEES PAID

THAT'S A >200% RETURN' ON INVESTMENT!!!



You tell me if this is a good deal for the citizens of Tulare





A LOCAL COMPANY INVESTING IN TULARE'S FUTURE



EXHIBIT 8

8/28/2014

Fitch Ratings | Press Release

FitchRatings

Tagging Info

Fitch Affirms Tulare Local Health Care District (CA) Revs at 'B'; Removes Rating Watch Negative Ratings Endorsement Policy

28 Aug 2014 1:40 PM (EDT)

Fitch Ratings-New York-28 August 2014: Fitch Ratings has affirmed the 'B' rating on \$15,230,000 series 2007 fixed rate bonds issued by the Tulare Local Health Care District d/b/a Tulare Regional Medical Center (TRMC).

The Rating Watch Negative has been removed and the Rating Outlook is Stable.

SECURITY

Debt payments are secured by a pledge of the gross revenues of Tulare Local Health Care District. A fully funded debt service reserve fund provides additional security for bondholders.

KEY RATING DRIVERS

CONSTRUCTION PLANS DEVELOPING: The removal from Rating Watch Negative reflects growing clarity and progress on construction plans achieved over the last six months. A settlement was reached with the previous contractor in July 2014. A new team has been put in place under HealthCare Conglomerate Associates' (HCCA) leadership, and a completion plan has been established. Currently, TRMC is evaluating various funding options, but no new debt is expected at the TRMC level.

SIGNS OF TURNAROUND: The Stable Outlook reflects the dramatic turnaround in operating and financial performance since Fitch's last review in February 2014. TRMC posted an operating loss of \$3.9 million through the six months ended Dec. 31, 2013, but a positive operating income of \$1.6 million in the second half of the year. Improved operating margin of negative 3.3% at fiscal year ended (FYE) June 30, 2014 (unaudited interim results) was attributable to revenue enhancement as well as expense reduction initiatives. Fitch believes the positive trend over the last few months indicates performance improvement plans taking hold and signal recovery.

LIQUIDITY REMAINS WEAK: TRMC's liquidity position remains very low, albeit slightly improved from one year ago. Unrestricted cash and investments were \$10.4 million at FYE 2014 was over 20% increased year-over-year, and equated to 57.3 days cash on hand, 4.1x cushion ratio, and 57% cash to debt.

RATING SENSITIVITIES

DISPUTE WITH TRUSTEE: By letter dated Aug. 4, 2014, the US Bank, as Trustee, issued a notice to TRMC asserting the occurrence of various defaults and Events of Default (EoD) under the Indenture, including failure to achieve the required long term debt service coverage ratio for fiscal years 2012 and 2014. TRMC has denied the existence of any defaults or EoD and the Trustee has withdrawn the Notice of Default by letter dated Aug 8. At this time, TRMC has made all required payments under the indenture. Fitch expects that this matter will be resolved without any negative impact to bondholders or the credit profile of TRMC.

CLARITY ON PROJECT FUNDING: Considerable amount of uncertainty around the timing and funding sources remain, although meaningful progress has been made over the last six months. Fitch believes that the hospital can continue to operate without completion of the project over the near term. Further, additional debt funding secured by the revenues of the hospital is not expected to be pursued over the near term.

8/28/2014

Fitch Ratings | Press Release

CREDIT PROFILE

Tulare Local Health Care District, d/b/a Tulare Regional Medical Center owns and operates a 112-bed hospital in the city of Tulare, California. Total operating revenue in FYE June 30, 2014 was \$68.6 million (exclusive of tax revenues related to GO bonds debt service). Since January 2014, TRMC has been managed by HealthCare Conglomerate Associates under a management agreement.

Construction Plans Developing

TRMC has a construction project in progress featuring a 24-bed emergency department, a new diagnostic department, a 16-bed obstetric unit, four surgery suites, and 27 new private patient rooms meeting seismic requirements. This new expansion tower was initially slated to open October 2012, but suffered disruptions due to concrete delamination issues and ensuing conflicts with the contractors.

Over the last six months, TRMC was able to reach a settlement agreement with the previous contractors and put a makeup schedule and budget in place. The completion of the project is now pending a funding source, with several options currently under evaluation. Fitch assumes that the ultimate decision will not have a material impact on TRMC's solvency, and will evaluate any impact of funding sources after plans are finalized and disclosed.

Signs of Turnaround

TRMC posted a loss of \$2.3 million (negative 3.3% operating margin) in fiscal 2014, which is significantly improved from a \$3.9 million loss (negative 12% operating margin) through the six months ended Dec. 31, 2013. Similarly, operating EBITDA margin improved from a negative 3.8% to a positive 4.2%. Management's initial goal was to breakeven in calendar year 2014. Given the \$1.6 million operating income generated in the six months ended June 30, 2014, Fitch believes TRMC is on track to meet its targets.

Under a new leadership team from HCCA, the performance improvement plan largely focuses on putting sustainable operating structures in place, with a two-pronged approach at enhancing revenues and reducing expenditures. With inpatient volume continued to weaken, fiscal 2014 marked the first year of growth in outpatient surgeries and emergency department visits in over three years. Fitch also believes MediCal expansion will also be beneficial for TRMC in generating additional outpatient traffic.

Weak Liquidity

Liquidity showed modest growth in fiscal 2014, following four years of rapid declines driven by IT investments, other capital spending, and negative cash flow. Unrestricted cash and investments totaled \$10.4 million at June 30, 2014 compared to \$8.7 million at FYE 2013 and \$24.4 million at FYE 2010. Days cash on hand of 57 days, cushion ratio of 4.1x, and cash to debt of 57% remain weak compared to Fitch's median for below investment-grade ratings. Continued expense control and improvement in revenues should improve overall cash flow and slowly rebuild the balance sheet. While not expected, demand on unrestricted liquidity to support operations or fund the construction project would be viewed negatively.

Fitch also notes a debt service reserve account is in place for the series 2007 bonds, with approximately \$1.3 million held by a Trustee.

Weak Debt Metrics Despite Moderate Debt Burden

At June 30, 2014, Tulare's revenue supported debt burden totaled \$18.3 million, consisting of \$15.2 million in series 2007 bonds and \$3.1 million in capital leases. The debt is all fixed rate and produces a maximum annual debt service (MADS) of \$2.5 million, which declines to \$1.3 million in fiscal 2017 following the final payment on the capital lease.

Debt burden is relatively low, as measured by debt to capitalization of 28%. However, due to poor cash flow, MADS coverage was 1.3x in fiscal 2013 compared to 1.4x in 2013 and a negative 2.1x in 2012, compared to the average of 4x in 2009-2011. TRMC violated its debt service covenant in 2012, which resulted in a consultant-call in. The debt service covenant was met in fiscal 2013, and based on discussions with management and review of most recent financial statements, Fitch anticipates TRMC to meet its debt service covenant in 2014.

8/28/2014

Fitch Ratings | Press Release

Fitch believes TRMC has sufficient resources to pay its obligations over the next year.

Not included in Fitch's calculation of TRMC's long-term debt are \$85 million in general obligation (GO) bonds, which are not rated by Fitch. Since TRMC's GO debt is secured by a special assessment on property taxes in the district, Fitch's calculation of financial ratios excludes the GO debt and related receipts.

Trustee Dispute

On Aug. 4, 2014, US Bank, as Trustee, issued a written notice to the district asserting the occurrence of various defaults and EoD under the Indenture, including failure to achieve the required long term debt service coverage ratio for fiscal years 2012 and 2014 and failing to calculate correctly the long term debt service coverage ratio for fiscal year 2013. The district has disputed the existence of any defaults or an EoD under the Indenture and indicated that a forbearance would not be required. On Aug. 8, the Trustee withdrew its Notice of Default but also has reserved its rights under the Indenture pending further review.

TRMC is making the required monthly payments of gross revenues to the Trustee, and the Bond Reserve Account of the Revenue Fund is fully funded in the amount of \$1.4 million. TRMC has pledged to cooperate with the Trustee in the Trustee's review of the matters raised in the Notice of Default and Response. Fitch expects that this matter will be resolved without any negative impact to bondholders or the credit profile of TRMC.

DISCLOSURE

TRMC covenants to disclose annual financial statements within six months of year-end and quarterly unaudited financial statements within 30 days through the MSRB EMMA website.

Contact:

Primary Analyst Jennifer Kim, CFA Associate Director +1-212-908-0740 Fitch Ratings, Inc. 33 Whitehall Street New York, NY 10004

Secondary Analyst Emily Wadhwani Director +1-312-368-3347

Committee Chairperson James LeBuhn Senior Director +1-312-368-2059

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available at 'www.fitchratings.com'.

Applicable Criteria and Related Research:

- -- 'Revenue-Supported Rating Criteria', June 16, 2014;
- -- U.S. Nonprofit Hospitals and Health Systems Rating Criteria, May 30, 2014.

Applicable Criteria and Related Research:

Revenue-Supported Rating Criteria

U.S. Nonprofit Hospitals and Health Systems Rating Criteria

8/28/2014

Fitch Ratings | Press Release

Additional Disclosure Solicitation Status

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EXHIBIT 4

EXHIBIT 20



Kevin Northcraft: Director 4, Tulare Local Healthcare District

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A & & C . Kezin Horthcraft; Director 4.

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Citizens for Hospital Accountability

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Kevin Northcraft; Director 4, Tulare Local Healthcare District

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Log in



Citizens for Hospital Accountability

URGENT MESSAGE TO ALL RESIDENTS OF TULARE HEALTHCARE DISTRICT

At last night's meeting, our board truly reached the point of no return. Let us be clear the action they took in allowing HCCA to exert absolute control of our District's financial future—to the tune of \$79 million—crossed a new line that could prove to be their coup de gras in stealing our public hospital from the taxpayers

It is obvious that HCCA has no intention of seeking a HUD loan. The HUD guidelines for FHA-242 program specifically require that loans are made to projects that have not yet begun

CalMortgage loans will also remain unavailable unless a tremendous amount of operational and financial information is disclosed; information HCCA has proven unwilling to provide to other state lenders

These government sources are pure smokescreens. It is painfully clear that the "alternative financing" options are what draw HCCA's attention. With these loans, that have no board oversight, HCCA can effectively bankrupt our hospital, make the taxpayers foot the bill, and proceed to buy it for pennies on the dollar.

Suddenly, the amount requested has jumped from \$55 million in Measure I to \$79 million. By being so reckless with public funds, they are acting with complete disregard for the voters' resounding 'no' vote and placing us at greater risk than we faced in the Measure I campaign.

Ms. Wilbourn and Dr. Kumar deliberately lied to the public in the discussion of this resolution. They both claimed that this motion would only result in an application being completed by HCCA. However, Mr. Northcraft pointed out that this was untrue, that HCCA can apply for, "execute, and consummate" a loan. He then presented a substitute motion that specified that only an application could be completed, yet those same members. Kumar and Wilbourn, proceeded to deny what they had moments ago suggested as the proper course of action. They passed, by a 3-2 vote, the scripted resolution that grants HCCA full control.

NOW IS THE TIME FOR ACTION. Our board majority has presented us with their worst failure yet, and, now more than ever, we must hold them accountable.

We ask that you please call your elected officials to express your

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Fig. 2009/ \$ 2011

NOW IS THE TIME FOR ACTION. Our board majority has presented us with their worst failure yet, and, now more than ever, we must hold them accountable.

We ask that you please call your elected officials to express your displeasure with their decision to wash their hands of any responsibility to the public. The numbers they can be reached at are as follows.

Linda Wilbourn- (559)358-5407 Richard Torrez- (559)905-8933 Parmod Kumar- (559)799-6210

Furthermore, while we are seeking multiple options for action this series of events makes it more imperative than ever that our efforts to recall Kumar are successful. If you are able to donate to our cause—anything helps, even \$5, \$10, or \$25—we ask that you please do so by contacting us in a private message or visiting our webpage

(http://www.hospitalaccountability.com/) and giving via Paypal

We would like to emphasize our sentiment due to the extremely serious nature of this matter: this is the greatest threat we have faced thus far and are on the brink of losing our public hospital. Our board and HCCA must not be allowed to continue along this path. This theft and graft must come to an end. Please help us to stop this crisis.



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Citizens for Hospital Accountability - Visalial Times-Deha and Tulare Advance-Register (post

In case you missed it in today's edition

Benzeevi's out-and-out lies— that we are "in the clear"— at a public meeting are simply more evidence of his incredibly poor management. His increasingly desperate tactics indicate a desire to completely avoid scrutiny and as usual dodge transparency.

With your continued support, we will hold them accountable, recall Kumar and remove $\ensuremath{\mathsf{HCCA}}$

$_{\rm CTD}$ Visalia Times-Delta and Tulare Advance-Register

The renewed dispute was settled when the hospital withdrew a challenge to state regulations and specified that its medical staff would be self-governing



TRMC's battle with state over inspection report

Public records show the hospital and the California Department of Public Health struggled for almost two months over the content of a document...



>

Message





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Part 2 of special meeting



Comment ♣ Share Kevin Tracie Kelly, Johnathan N Rachelle Gilliland, Santi Ambrosio Top Comments and 9 others like this

16 shares

: Oh, here goes Benzeevi - false Citizens for Hospital Accountability narrative. He and Germany tap dancing terms of loan - no specifics given on loan!

Citizens for Hospital Accountability operating expenses!

Kevin is correct. No loan for

O 13

Citizens for Hospital Accountability of the loan Fraudi

Great, without knowing the terms

O 6

Citizens for Hospital Accountability attorney

No. it is CEO pretending to be

03

Citizens for Hospital Accountability ... yes, 3-0 - the other two don't count

Visitor Posts Lisa Avers August 1 of 10 f 4t to 44 Is there an address to write to or email Linda Wilbourn? Like Comment Share Danielle Evenson re Thought you all might be interested in seeing this As an RN continu. See More 2 Likes 2 Comments Like Comment Share

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Citizens for Hospital Accountability

AND THE REST OF

CALL TO ACTION

We are currently requesting as many residents of Tulare Healthcare District, and concerned ontookers beyond, as possible to call or contact our elected officials that may be able to assist us in ridding our district of HCCA and their greed. Many of us have already begun the process and we have passed along piently of relevant information to their offices.

We just need a critical mass of people to contact them to raise their attention to the issue. Please take a moment to make a short phone call or write a note to show your support.

Lastly we've included, once again, the contact numbers for board members Richard Torrez and Linda Wilboum. If you are their constituent, we encourage you to call and urge them to begin working with Ms. Gutlerrez, who was rightfully and legally seated on the board last week, to save our public hospital from the destruction wrought by HCCA and Dr. Kurnar.

Direct public action may be our best chance at creating a swift and effective change. If we can get enough people engaged, we may be able to put a

quick end to HCCA's fraudulent leadership

Contacts can be made to the following officials

California Attorney General Xavier Becerra Email address: PlU@doj ca gov

Phone number 1-800-952-5225 (choose #7 on info list - "leave message")

State Treasurer John Chiang Main line (916) 653-2995

Governor Jerry Brown https://govapps.gov.ca.gov/gov39ma//

Fill in the blanks to send email Main phone number 916-445-2841

District Altorney Tim Ward Main Number 559-636-5494

Bureau of investigations 559-636-5410

Board Chair Linda Wilbourn

559-358-5407

Board Member Richard Torrez

559-905-8933





EXHIBIT 21

FitchRatings

Fitch Downgrades Tulare Local Health Care Dist, CA's IDR to 'D' After Bankruptcy; Downgrades Revs

Fitch Ratings-Austin-06 October 2017: Fitch Ratings has downgraded to 'D' from 'CC' the Issuer Default Rating (IDR) of Tulare Local Health Care District, CA d/b/a Tulare Regional Medical Center (TRMC) and downgrades to 'C' from 'CC' the rating on the \$13,650,000 of series 2007 fixed-rate bonds issued by TRMC. The downgrade of the series 2007 bonds to 'C' indicates that default appears inevitable.

KEY RATING DRIVERS

BANKRUPTCY FILING: The downgrade of the IDR to 'D' reflects TRMC's filing of a petition to commence proceedings as a debtor under chapter 9 of the United States Bankruptcy Code on September 30, 2017 in the United States Bankruptcy Court for the Eastern District of California. A notice pertaining to the TRMC bankruptcy filing was made to series 2007 bondholders by the trustee on Oct. 3, 2017. The notice indicated that the bond reserve account had a value of \$1,413,289.65 as of the date of the notice.

DOWNGRADE OF SECURITY RATING: The downgrade of the series 2007 bonds to 'C' indicates that default appears inevitable absent timely third-party intervention to

support operations and debt service payments. The 'C' rating incorporates security provided by a trustee-held Bond Reserve Account and monthly funding of interest and principal to the series 2007 Bond Revenue Fund through at least July 2017. Funds in the Bond Reserve Account Bond Revenue Fund appear sufficient to fund debt service through the November 2017 and May 2018 payment dates.

INABILITY TO MEET FINANCIAL OBLIGATIONS: The voluntary petition included factual findings among which were that TRMC is or will be unable to pay its obligations within the next 60 days and that TRMC has zero cash in its bank accounts. TRMC has insufficient cash to pay its employees and vendors, posing an imminent risk of closure and a risk to public health and safety.

RATING SENSITIVITIES

IDR RATING: The IDR has reached the lowest level on Fitch's rating scale. An upgrade is unlikely at this time given the bankruptcy proceedings underway.

SECURITY-SPECIFIC RATING: Failure to make payment of principal/and or interest under the contractual terms of the series 2007 bonds will result in downgrade to a rating of 'D'.

For more information on TRMC, see Fitch's release 'Fitch Downgrades Tulare Local Health Care District (CA) Revs to 'CC'; Maintains Negative Watch dated Sep. 6, 2017 and 'Fitch Downgrades Tulare Local Health Care District (CA) Rev Bonds to 'B'; Maintains Negative Watch' Aug. 9, 2017 and available at 'www.fitchratings.com'.

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Media Relations: Benjamin Rippey, New York, Tel: +1 646 582 4588, Email: benjamin.rippey@fitchratings.com.

Additional information is available on www.fitchratings.com

Applicable Criteria

Rating Criteria for Public Sector Revenue-Supported Debt (pub. 05 Jun 2017) (https://www.fitchratings.com/site/re/898969)
U.S. Nonprofit Hospitals and Health Systems Rating Criteria (pub. 09 Jun 2015) (https://www.fitchratings.com/site/re/866807)
U.S. Public Finance Tax-Supported Rating Criteria (pub. 31 May 2017) (https://www.fitchratings.com/site/re/898466)

Additional Disclosures

Dodd-Frank Rating Information Disclosure Form (https://www.fitchratings.com/site/dodd-frank-disclosure/1030343)
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EXHIBIT 22

Moody's Downgrades GO Rating of Tulare Local Health Care District (CA) to Ba3; O... https://www.moodys-com/research/Moodys-Downgrades-GO-Rating-of-Tulare-Local

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Rating Action: Moody's Downgrades GO Rating of Tulare Local Health Care District (CA) to Ba3; Outlook Remains Negative

Global Credit Research - 05 Oct 2017

NOTE: On October 6, 2017, the press release was corrected as follows: In the second sentence of the press release, "affirmed" was changed to "maintained". Revised release follows

New York, October 05, 2017 -- Summary Rating Rationale

Moody's Investors Service has downgraded to Ba3 from Ba2 the rating on Tulare Local Health Care District, CA's general obligation bonds. We have also maintained the negative outlook. Approximately \$84.1 million of Election of 2005, Series A (2007), Election of 2005, Series B-1 (2009) general obligation debt remains outstanding. The downgrade to Ba3 with a negative outlook reflect the district's recent filing for Chapter 9 bankruptcy protection on September 30th. The rating is also based upon the district's deteriorating financial and operational performance, nonexistent cash fliquidity, failure to secure financing to complete construction of a planned medical tower, dysfunctional board relations, poor reporting and oversight practices, and the possibility of closure. Serving to offset significant risks to the hospital's future viability, the Ba3 rating is bolstered by the strength of a voter-approved, unlimited property tax pledge and the well-astablished levy and collection history of the county for the debt service payments. Tulare county (Issuer Rating Aa2) rather than the health care district, levies, collects and disburses the district's property taxe stepticity to Wilmington Trust N.4 as Inustee, in the month prior to debt service payments, which are due on August and February 1st. This arrangement insulates the GO levy from the district's operations. As a purely legal matter, the GO levy can only be used for GO debt service. The district's growing tax base, supported by favorable performance of the area's largely agricultural economy, also strengthers the credit quality of the district's GO bonds. Beginning in January 2014, medical center operations were outsourced under a Management Services Agreement to HealthCare Conglomerate Associates, LLC (HCCA). While the new management team initially improved operating performance in fiscal 2014 and 2015, they have failed to secure financing to complete construction on a new medical tower following voters' failure in August 2016 to approve general obligation fund

Rating Outlook

Related Issuers

Tulare Local Health Care District, CA

Related Research

Rating Update: Tulare Local Health Care District, CA: Update - Moody's Downgrade GO Rating of Tulare Local Health Care District (CA) to Ba3; Outlook Remains Negative

Rating Action: Moody's Downgrades GO Rating of Tulare Local Health Care District (CA) to Ba2; Outlook Negative

ARating Update: Tulare Local Health Care District, CA: Rating Update - Moody's Downgrades GO Rating of Tulare Local Health Care District (CA) to Ba2: Outlook Negative Moody's Downgrades GO Rating of Tulare Local Health Care District (CA) to Ba3; O... https://www.moodys.com/research/Moodys-Downgrades-GO-Rating-of-Tulare-Local

The negative outlook reflects ongoing risks associated with the district's recent filing for Chapter 9 bankruptcy protection and questionable future viability of the hospital. The district's considerable challenges include two consecutive years of operating income and patient utilization declines and an eradicated cash position. The district's failure to secure financing for completion of a new medical tower increases the likelihood of continued deterioration in these metrics. Dysfunctional board relations, combined with weak reporting and oversight practices, are likely to prevent effective decision making, increasing the likelihood of further credit deterioration and future closure of the hospital

Factors that Could Lead to an Upgrade

Finalization of financing for new medical tower with evidence that ongoing operations can comfortably support this obligation

Full repayment of \$14 million loan from HCCA with restoration of satisfactory liquidity

Restoration of sounds finances with consistent performance and substantially improved utilization

Clarity on the treatment of the GO bonds during the pendency of the bankruptcy

Factors that Could Lead to a Downgrade

Interruption or delays in the county's normal property tax collection and remittance practices

Evidence of potential nonpayment of general obligation debt service

Hospital closure, in the absence of clarity on the GO bonds being held harmless in the bankruptcy

Legal Security

The bonds are secured by the district's voter-approved, unlimited, ad valorem property tax pledge. Significant to the GO bonds' security, Tulare county (Issuer Rating Aa2) rather than the health care district, levies, collects and disburses the district's property taxes. This arrangement further insulates the GO levy from the district's operations. As a purely legal matter, the GO levy can only be used for GO debt service.

Use of Proceeds

N/A

Obligar Profile

Located on the west side of Tulare County (Issuer Rating Aa2) in the City of Tulare (Issuer Rating A1), the district serves a roughly 450 square mile area with an approximate population of 100,000. The hospital has several competitors within 30 miles, although none exist within the district's boundaries or its primary service area.

Methodology

The principal methodology used in this rating was US Local Government General Obligation Debt published in December 2016. An additional methodology used in this rating is the Not-For-Profit Healthcare Rating Methodology published in November 2015. Please see the Rating Methodologies page on www.moodys.com for a copy of these methodologies.

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Rating Action: Moody's Affirms Baa3 GO Rating of Tulare Local Health Care District (CA), Outlook Revised to Stable

ARating Update: Tulare Local Health Care District, CA: Rating Update - Moody's Affirms Baa3 GO Railing of Tulare Local Health Care District (CA), Outlook Revised to Stable Moody's Downgrades GO Rating of Tulare Local Health Care District (CA) to Ba3; O... https://www.moodys.com/research/Moodys-Downgrades-GO-Rating-of-Tulare-Local

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EXHIBIT 23

FITCH DOWNGRADES TULARE LOCAL HEALTH CARE DISTRICT (CA) REV BONDS TO 'B'; MAINTAINS NEGATIVE WATCH

Fitch Ratings-Austin-09 August 2017: Fitch Ratings downgrades its rating on \$13,650,000 series 2007 fixed-rate bonds issued by the Tulare Local Health Care District d/b/a Tulare Regional Medical Center (TRMC) to 'B' from 'BB-'. TRMC's Issuer Default Rating (IDR) has also been downgraded to 'B' from 'BB-'. Fitch is maintaining the Rating Watch Negative (RWN).

SECURITY

Debt payments are secured by a pledge of the gross revenues of Tulare Local Health Care District. A fully funded debt service reserve fund provides additional security for bondholders.

KEY RATING DRIVERS

REDUCED LIQUDITIY: The downgrade to 'B' from 'BB-' is largely the result of event-driven declines in liquidity to approximately 18 days of cash on hand (DCOH) as of March 31, 2017 from 56 DCOH as of June 30, 2016. Cash decreased further as of June 30, 2017. The rating assumes improvement in TRMC's cash position associated with liquidity support in the near term and from the collection of outstanding receivables over the medium term.

SIGNIFICANT INCREASE IN DEBT: Maintenance of the RWN reflects Fitch's expectation for an increase in TRMC's leverage associated with the sizable amount of debt necessary to complete its long-delayed tower project. The district reports plans to issue bonds through the FHA 242 program, if approved, or Cal Mortgage by calendar year-end subsequent to failure of a \$55 million general obligation (GO) ballot measure in August 2016.

OPERATING PROFITABILITY: Solid cost management supports profitability that is favorable to below-investment grade (BIG) medians. However, declining utilization trends and low patient satisfaction risk future profitability if not reversed.

DELAYED TOWER PROJECT: The tower project has been delayed from an original 2012 completion date due to construction problems, ensuing litigation with the project's contractor, and challenges in securing project funding. The district reports expected completion of the tower project 14 to 16 months after additional financing is secured. Fitch believes that the project delay and funding uncertainty has resulted in operating challenges and continued utilization pressure. Completion of the project is essential to mitigate out-migration trends.

RATING SENSITIVITIES

LIQUIDITY IMPROVEMENTS: The current rating assumes near term improvement in TRMC's cash position from a \$22 million working capital loan which is expected to close the week of August 14, 2017. An inability to restore liquidity by the end of August will result in further negative rating action.

FINANCING EXPECTED: Management reports plans to secure additional tower project financing by calendar year end through the FHA 242 program or Cal Mortgage programs. Fitch's rating is expected to be withdrawn if TRMC receives approval to refinance the Series 2007 bonds and issue the new debt through the FHA 242 program.

Exhibit 23, Page 325

QUALITY OF INFORMATION: Fitch is concerned about receipt of timely and quality information over the longer term. Maintenance of the Fitch rating is dependent on management's ability to provide timely and quality information.

CREDIT PROFILE

Tulare Local Health Care District, d/b/a Tulare Regional Medical Center owns and operates a 112-bed hospital in the city of Tulare, California. Total operating revenue in fiscal 2016 was approximately \$80 million (excluding tax revenues related to GO bond debt service). Since January 2014, TRMC has been managed by HealthCare Conglomerate Associates (HCCA). The current management agreement runs until 2029 with possible extensions.

CASH CONSTRAINTS

TRMC's liquidity declined from approximately 97 DCOH at June 30, 2015 to 56 days at June 30, 2016, to a very low 17 days (\$3.6 million) as of March 31, 2017. Cash has declined further since March, requiring management to make frequent cash management decisions on obligations as they come due. A sizable Cerner information technology conversion project accounted for most of the cash decline during fiscal 2016 further exacerbated by revenue cycle disruptions and delayed Medi-Cal payments in fiscal 2017.

The TRMC board approved a \$22 million working capital loan in June 2017 which management expects to close in the immediate future. The terms and final amounts of this short-term financing have not been shared with Fitch as of this time, but the loan is expected to provide needed cash to support operations and allow for the longer-term replenishment of cash through TRMC's operating cycle. Key to the cash recovery will the collection of accounts receivables which is now approaching 120 days, up from 53 days as of fiscal year end 2016 and significantly above the 48 day median for this rating category.

OPERATING PROFITABILITY

HealthCare Conglomerate Associates (HCCA) began managing TRMC hospital operations in January 2014. HCAA provides the hospital's personnel and has returned TRMC to profitability through sizable cost reductions subsequent to several years of operating losses. Fiscal 2015 and 2016 operating EBITDA margins of 16.6% and 15.2% respectively (including property tax revenue), compare favorably to the BIG median of 10.5%.

Despite a return to profitability, hospital utilization has continued to decline. TRMC's patient days declined from 22,268 in fiscal 2011 to 18,301 in fiscal 2013 and to an even lower 14,825 in fiscal 2016. Management reports that much of the current patient and physician dissatisfaction originates with the physician limitations at the current hospital site, which would be addressed by the new facility. Fitch believes that operational improvements and completion of the new patient tower are necessary to stem the outmigration trend.

HCCA receives a monthly management fee, escalated annually, for services provided under its 15-year contract executed with TRMC in 2014. Upon defeasance of the series 2007 revenue bonds, HCCA could enter into a joint operating agreement with the hospital entailing changes to the HCCA compensation structure. Fitch does not have information about compensation arrangements under a joint operating agreement structure. Although not expected, a structural change that materially reduced TRMC's ability to maximize cash flow needed for the tower project and replenish liquidity would be viewed as a credit negative.

TOWER PROJECT

TRMC's four-story, 115,000 square foot tower project had an original completion date of October 2012, but encountered construction delays and ensuing litigation, since resolved. As of June

30, 2016 TRMC had recorded approximately \$138 million as construction-in progress, with an estimated \$55 million required for project completion.

Citizens failed to approve general obligation funding for the project in August 2016. The district's board approved a resolution in March 2017 authorizing HCCA to secure a \$79 million commitment from the United States Department of Housing (HUD) through the Federal Housing Administration (FHA) Section 242 application process. The board authorized HCCA to concurrently secure a commitment from Cal Mortgage. The commitment is intended to fund the tower project and refund the district's outstanding series 2007 revenue refunding bonds. Management is currently working on the feasibility study and site visits required by HUD and expects to have the financing in place by calendar year-end 2017. ELEVATED DEBT

TRMC's debt profile consists of fixed rate debt (primarily GO bonds and the series 2007 revenue bonds), and equipment leases totaling about \$100 million as of June 30, 2016. Series 2007 bond principal payments are made Nov. 1 and interest is paid on May 1 and Nov. 1 of each year.

TRMC's debt is elevated as measured by a fiscal 2016 debt coverage of 12.1x in relation to a 4.9x median for the below investment grade category. Debt metrics are expected to be strained with the proposed \$79 million financing.

INTERNAL CONTROL WEAKNESSES

The TRMC fiscal 2016 audit was issued late and contained corrections of errors and findings of material financial reporting weaknesses. The current rating assumes that management will correct the identified reporting weaknesses as indicated in TRMC management responses to the findings. If left unaddressed the financial reporting weaknesses would cast doubt on the reliability of future financial statements.

DISCLOSURE

TRMC covenants to disclose annual financial statements within four months of fiscal year-end and quarterly unaudited financial statements within 60 days of quarter end through the MSRB EMMA website.

VARIATION FROM PUBLISHED CRITERIA

The assignment of and analysis supporting the 'B' IDR includes a variation from the U.S. Nonprofit Hospitals and Health Systems Rating Criteria. Enhanced analysis under the variation relates to the assessment of the benefits and risks of supplemental tax revenues available to the healthcare provider. This evaluation is supported by Fitch's U.S. Tax-Supported Rating Criteria dated May 31, 2017 that includes refinements to the analysis of both tax revenue volatility, through the new Fitch Analytical Sensitivity Tool (FAST), and the value of taxing capacity relative to the issuer's potential revenue stress in a downturn. The assessment does not provide any uplift to the rating based on the inability of TRMC to independently adjust the ad valorem tax rate.

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Applicable Criteria
Rating Criteria for Public Sector Revenue-Supported Debt (pub. 05 Jun 2017)
https://www.fitchratings.com/site/re/898969
U.S. Nonprofit Hospitals and Health Systems Rating Criteria (pub. 09 Jun 2015)
https://www.fitchratings.com/site/re/866807
U.S. Public Finance Tax-Supported Rating Criteria (pub. 31 May 2017)
https://www.fitchratings.com/site/re/898466

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EXHIBIT 24

Fitch Downgrades Tulare Local Health Care District (CA) Revs to 'CC'; Maintains Negative Watch

Fitch Ratings-Austin-06 September 2017: Fitch Ratings has downgraded to 'CC' from 'B' \$13,650,000 of series 2007 fixed-rate bonds issued by the Tulare Local Health Care District, CA d/b/a Tulare Regional Medical Center (TRMC). Fitch has also downgraded TRMC's Issuer Default Rating (IDR) to 'CC' from 'B', indicating probable default risk. Fitch maintains the bonds and the IDR on Rating Watch Negative.

KEY RATING DRIVERS

DOWNGRADE ON INABILITY TO RESTORE LIQUIDITY: Fitch's Aug. 9, 2017 release noted that TRMC's current rating hinged on its ability to restore liquidity by the end of August 2017. The downgrade to 'CC' represents very high levels of credit risk, reflecting TRMC's continued delays in executing external liquidity agreements to bolster working capital and heightened political instability at the TRMC board level.

NEGATIVE WATCH REFLECTS FRACTURED GOVERNANCE: Maintenance of the Rating Watch Negative reflects Fitch's concern over the breakdown of communication between the TRMC board and hospital management that places risk on hospital operations and execution of credit agreements.

RATING SENSITIVITIES

LIQUIDITY IMPROVEMENTS: The current rating assumes near term improvement in TRMC's cash position. An inability to restore liquidity by the end of September 2017 will result in further negative rating action.

FUNCTIONAL GOVERNANCE: Resolution of the Rating Watch Negative requires clarity over the legality of TRMC board and hospital administration actions and development of a working relationship between the TRMC board and hospital administration to support TRMC operations, reporting and financing activities.

SUFFICIENT INFORMATION: Fitch is concerned about receipt of timely and reliable information. Maintenance of the Fitch rating is dependent on management's ability to provide timely and reliable information.

For more information on TRMC, see Fitch's release 'Fitch Downgrades Tulare Local Health Care District (CA) Rev Bonds to 'B'; Maintains Negative Watch' dated Aug. 9, 2017 and available at 'www.fitchratings.com'.

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Applicable Criteria

Rating Criteria for Public Sector Revenue-Supported Debt (pub. 05 Jun 2017) (https://www.fitchratings.com/site/re/898969)
U.S. Nonprofit Hospitals and Health Systems Rating Criteria (pub. 09 Jun 2015) (https://www.fitchratings.com/site/re/866807)

U.S. Public Finance Tax-Supported Rating Criteria (pub. 31 May 2017) (https://www.fitchratings.com/site/re/898466)

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EXHIBIT 25



REQUEST FOR FUNDS

Healthcare Conglomerate Associates, LLC (the "Manager") hereby requests that Tulare Local Healthcare District d/b/a Tulare Regional Medical Center (the "District"), hereby provide funds in the amount of One Million Sixty Four Thousand Seven Hundred Twenty Nine Dollars and Eighty cents (\$1,064,729.80) pursuant to Section 3(b)(iii) of the Management Services Agreement dated May 29, 2014 by and between Manager and District (the "MSA") in order to meet the payroll due and payable to the personnel working in the District's hospital on December 21,2016.

Manager is willing to advance funds pursuant to Section (4)(j)(i)(1) of the MSA should the District be unable or unwilling to provide the required funds in accordance with the terms of the MSA.

Please advise the undersigned as soon as possible, but in no event later than 7 a.m. on December 21, 2016, whether the District will provide funds on or before 7 a.m. on December 21, 2016. If the District is unable or unwilling to advance the required funds, Manager will advance the funds with no further notice.

Sincerely

Healthcare Conglomerate Associates, LLC

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The purks at the time

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12.2016

Vice Chairman of

Rose O

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PROMISSORY NOTE

\$1,064,729.80 December 21, 2016

FOR VALUE RECEIVED, and pursuant to the terms of this Promissory Note ("Note") the undersigned, Tulare Local Healthcare District, a California Public Hospital District d/b/a Tulare Regional Medical Center (the "Maker"), hereby unconditionally promises to pay to the order of Healthcare Conglomerate Associates, LLC, a California limited liability company (the "Holder") the principal amount of One Million Sixty Four Thousand Seven Hundred Twenty Nine and 80/100 US Dollars (\$1,064,729.80).

This Note does not have a revolving feature. If any of the principal amount of the loan is repaid in full or in part by Maker, such amount shall not be available to be re-borrowed by the Maker. Notwithstanding the foregoing, however, from time to time, in the sole discretion of the Holder, the Holder may loan additional funds to the Maker as provided in the Management Services Agreement dated May 29, 2014 by and between Holder and Maker (the "MSA"). Any additional funds loaned by the Holder to the Maker hereunder shall be added to the then outstanding principal amount, and the new principal amount shall be re-amortized from the date the additional funds are loaned to the Maker to the Maturity Date.

- 1. <u>Principal Repayment</u>. All unpaid principal plus all accrued and unpaid interest shall be due and payable by Maker to Holder in full without notice or demand on January 3, 2017 ("<u>Maturity Date</u>"). Any payments, when made, shall be applied first to accrued interest to date of payment computed upon the outstanding unpaid balances and the remainder applied to principal.
- 2. <u>Interest</u>. This indebtedness evidenced by this Note shall bear interest at the rate of 1.0% per month or the maximum interest rate allowed by applicable law, as provided in Section 6(e) of the MSA. Notwithstanding the foregoing, no interest shall be payable hereunder if this Note is fully satisfied on or before January 3, 2017.
- 3. Method of Payment; Place of Payment; Offset. All amounts payable hereunder shall be payable in lawful money of the United States of America. Payments shall be made to Holder as provided in the MSA, unless another place of payment shall be specified to Maker in writing by the Holder. Payments, when made, first shall be applied to any damages, penalties, fees, costs, or other charges accrued and payable pursuant to this Note, then to all accrued interest to date of payment, and then to the payment of principal hereunder. Time is of the essence hereof and all obligations hereunder shall be timely performed in accordance with the provisions hereof.
- 4. <u>Default Rate</u>. From and after the Maturity Date, whether by acceleration or otherwise, or from the occurrence of an event of default until such a default is cured, the entire amount of the principal, interest and any other amount remaining unpaid under this Note shall bear interest at the annual interest rate of 12.00% (the "<u>Default Rate</u>") provided, however, that the Default Rate shall in no event exceed the maximum interest provided under applicable law. Maker





acknowledges and agrees that (i) a default in making the payments herein agreed to be paid when and as due will result in Holder incurring additional administrative expenses, and loss to Holder of the use of the money due, (ii) if for any reason Maker fails to pay any amounts due hereunder, Holder shall be entitled to damages for the detriment caused thereby, but that it is extremely difficult and impractical to ascertain the extent of such damages, and (iii) the late fees specified in this paragraph are a reasonable estimate by the parties of such damages. Notwithstanding the late fees and penalties set forth herein, in the event of a default Holder shall be entitled to all rights and remedies available at law and equity.

- 5. Default. Each of the following events shall be an "Event of Default" hereunder:
 - (a) Maker fails to pay timely any amount as and when due under this Note;
- (b) Maker files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or makes any assignment for the benefit of creditors or takes any corporate action in furtherance of any of the foregoing; or
- (c) An involuntary petition is filed against Maker (unless such petition is dismissed or discharged within thirty (30) days) under any bankruptcy statute now or hereafter in effect, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of Maker.
- 6. <u>Acceleration</u>. Upon the occurrence of an Event of Default hereunder the unpaid principal balance, all accrued interest and all other amounts owing hereunder shall automatically and without notice become immediately due and payable in full.
- 7. <u>Waiver</u>. Maker waives all notices, presentment and demand for payment, notice of dishonor, protest and notice of protest of this Note, and shall pay all costs of collection, whether or not a suit is filed, when incurred, including, without limitation, reasonable attorneys' fees, costs and other expenses. No delay or omission on the part of the Holder hereof in exercising any right hereunder shall operate as a waiver of such right or remedy, or any additional right or remedy or in any future occasion.
- 8. <u>Prepayment.</u> Maker may prepay any and all amounts due under this Note in whole or in part at any time and from time to time without penalty or premium.
- 9. Governing Law. This Note shall be governed by, interpreted under and construed in accordance with the laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of California applicable to contracts made and to be performed therein.
- 10. <u>Successors and Assigns</u>. Neither the Maker nor the Holder shall be permitted to assign its rights or obligations under this Note without the prior written consent of the other party.



12.21.2016 PROMISSORY NOTE

Subject to the preceding sentence, the provisions of this Note shall inure to the benefit of and be binding on any successor to the Maker or the Holder.

- 11. <u>Remedies; Legal Fees and Costs.</u> The Holder shall be entitled to recover from Maker any and all attorneys' fees incurred by the Holder in collection efforts, before or after judgment in any court of law, including but not being limited to attorneys' fees incurred in connection with execution on any such judgment.
- 12. <u>Amendment</u>. This Note may not be amended orally but only by an agreement in writing signed by both Maker and Holder as to the amendment that would apply.
- 13. <u>Notices</u>. All notices, requests, demands, claims and other communications hereunder will be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given if (and then one business day after) it is sent by reputable overnight courier service (delivery charges prepaid) addressed to the intended recipient as set forth in the MSA.

Any party may send any notice, request, demand, claim or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, messenger service or ordinary mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other party notice in the manner herein set forth.

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12.21.2016 PROMISSORY NOTE

PARMOD KUMM MI) VILE CLARMON BOOM of Director

IN WITNESS WHEREOF, Maker has executed this Promissory Note as of the date first set forth above.

"MAKER"

Tulare Local Healthcare District d/b/a Tulare Regional Medical Center

By: Healthcare Conglomerate Associates, LLC, as Agent and attorney in fact

By:

Yorai (Benny) Benzeevi, M.D., Manager

610136118.1

EXHIBIT 26

Tulare Regional Medical Center Financial Statistics Summary June 30, 2017

	Current Month			Year-to-Date							
_	Actual	Budget	Variance	% Var.	Actual	Budget	Variance	% Var.	Prior year YTD	Increase/ (Decrease)	% Chg.
Inpatient Utilization											
Acute Patient Days	3,082	3,477	(395)	-11%	13,429	15,437	(2,008)	-13%	16,257	(2,828)	-17%
Discharges	713	871	(158)	-18%	2,942	3,835	(893)	-23%	3,373	(431)	-13%
Average Length of Stay	4.32	3.99	0.33	8%	4.56	4.03	0.54	13%	4.40	0.17	4%
Discharges											
Medicare	255	265	(10)	-4%	998	1,149	(151)	-13%	1,082	(84)	-8%
Medicare MC	44	59	(15)	-25%	152	176	(24)	-13%	137	15	11%
Medi-Cal	53	117	(64)	-55%	247	597	(350)	-59%	405	(158)	-39%
Medi-Cal MC	265	292	(27)	-9%	1,132	1,342	(210)	-16%	1,236	(104)	-8%
HMO/FFO	81	109	(28)	-26%	327	464	(137)	-30%	415	(88)	-21%
Self-Pay	8	14	(6)	-43%	32	39	(7)	-17%	50	(18)	-36%
Other	7	15	(8)	-54%	54	69	(15)	-21%	48	6	13%
	713	871	(158)	-18%	2,942	3,835	(893)	-23%	3,373	(431)	-13%
Case Mix Index											
Medicare	0.8940	1.7933	(0.8993)	-50%	1.2884	1.4005	(0.1121)	-8%	1.3287	(0.0403)	-3%
Medi-Cal	1.1070	0.8148	0.2922	36%	1.0178	0.8434	0.1744	21%	0.9509	0.0669	7%
Overall	0.9640	1.1373	(0.1733)	-15%	1.1191	1.0176	0.1015	10%	1.0527	0.0663	6%
Newborn Deliveries	120	276	(156)	-57%	528	1,139	(611)	-54%	750	(222)	-30%
Observation											
Patients	-	131	(131)	-100%	408	1,432	(1,024)	-72%	1,004	(596)	-59%
Hours	•	3,072	(3,072)	·100%	5,359	33,624	(28,265)	-84%	41,508	(36,149)	-87%
Equivalent days	•	131	(131)	-100%	223	1,432	(1,209)	-84%	1,114	(891)	-80%
Surgery Services											
Inpatient Cases	119	205	(86)	-42%	528	859	(331)	-39%	672	(144)	-21%
Outpatient Cases	260	488	(228)	-47%	1,143	2,036	(893)	-44%	1,787	(644)	-36%
Total surgeries	379	693	(314)	-45%	1,671	2,895	•	-42%	2,459	(788)	-32%
Emergency Room											
Visits	6,606	8,888	(2,282)	-26%	31,407	36,653	(5,246)	-14%	32,605	(1,198)	-4%
Admits	482	558	(76)	-14%	2,275	2,301	(26)	-1%	2,000	275	14%

Tulare Regional Medical Center Financial Statistics Summary June 30, 2017

	Current Month				Year-to-Date						
-	Actual	Budget	Variance	% Var.	Actual	Budget	Variance	% Var.	Prior year YTD	(Decrease)	% Chg.
Ancillary Services											
Inpatient											
Imaging Procedures	1,536	2,005	(469)	-23%	6,786	8,184	(1,398)	-17%	7,935	(1,149)	-14%
Lab Tests	20,608	28,538	(7,930)	-28%	96,601	114,855	(18,254)	-16%	120,246	(23,645)	-20%
OutPatient											
Endoscopy Procedures	143	447	(304)	-68%	644	1,859	(1,215)	-65%	1,215	(571)	-47%
Lab Tests	45,616	49,199	(3,583)	-7%	185,331	198,012	(12,681)	-6%	193,163	(7,832)	-4%
Diag. radiology Procedures	7,230	6,945	285	4%	24,728	28,196	(3,468)	-12%	27,527	(2,799)	-10%
Nuclear Medicine Procedures	45	81	(36)	-44%	206	381	(175)	-46%	252	(46)	-18%
MRI Procedures	333	372	(39)	-10%	1,009	1,457	(448)	-31%	1,162	(153)	-13%
Ultrasound Procedures	1,979	1,747	232	13%	7,274	7,114	160	2%	7,343	(69)	-1%
CT Procedures	1,373	1,284	89	7%	5,219	5,175	44	1%	5,202	17	0%
Clinics											
Primary Care Visits	3,021	4,009	(988)	-25%	13,253	15,284	(2,031)	-13%	16,746	(3,493)	-21%
Specialty Care Visits	653	1,715	(1,062)	-62%	2,645	7,662	(5,017)	-65%	4,669	(2,024)	-43%
Home Health											
Visits	307	872	(565)	-65%	2,114	3,329	(1,215)	-36%	2,579	(465)	-18%
Staffing											
Paid FTE's	488	379	108	29%	350	379	(29)	-8%	399	(49)	-12%
Productive FTE's	400	347	53	15%	342	347	(5)	-1%	357	(14)	-4%
Paid FTE's/AOB	4.43	4.43	0.00	0%	4.36	4.07	0.29	7%	4.32	0.04	1%
Worked FTE's/AOB	3.93	4.05	-0.13	-3%	4.27	4.32	(0.06)	-1%	4.44	(0.18)	-4%
Revenue/Costs											
OP Revenue/Adjusted Discharge	9,058	10,250	(1,192)	-12%	9,044	9,807	(763)	-8%	10,464	(1,419)	-14%
Cost/Adjusted Discharge	15,223	9,688	5,535	57%	10,551	8,984	1,568	17%	9,747	804	8%
Net Operating Gain/(Loss) \$	6,195,168	9,722,844	(3,527,676)	-36%	6,195,168	9,722,844	(3,527,676)	-36%	6,133,137	62,031	1%

TULARE REGIONAL MEDICAL CENTER Balance Sheet for the period ended 6/30/2017 unaudited

Current assets:				Increase/	Inc/(Dec)
Cash and cash equivalents \$2,088,851 \$11,404,417 \$(59,315,566) \$(8,17%) Lid use assets avail for curr debt svic 6,166,780 6,044,283 122,497 2.0% Patient accounts receivable 81,064,255 51,677,852 29,391,403 56.9% Contractual allowances (54,424,881) (37,412,314) (16,830,567) 45.0% Provision for bad debts & charity (1,192,6793) (3,166,079) 1,380,0122 124.4% Other receiv. & phys. advances 6,324,648 6,726,543 (401,895) (6.0%) Misc receivables 6,324,648 6,726,543 (401,895) (6.0%) Misc receivables 29,699,604 22,873,808 6,825,797 29.88 Inventories 1,170,647 1,205,933 (35,341,306) 11,347,527 1238 Inventories 1,170,647 1,205,933 (35,341,306) 11,347,527 1232 Assets limited as to use: 60 64,760,932 53,413,406 11,347,527 123 Go bond construction fund 5,372,456 5,498,312 (125,856)	Ct sanata	This year	Last year	(Decrease)	percentage
Lid use assets avail for curr debt sive 6,166,780 6,044,283 122,497 2.0% Patient accounts receivable 81,064,255 51,672,852 29,391,403 56.9% Contractual allowances (54,242,881) (37,412,314) (16,830,567) 45.0% Provision for bad debts & charity (1,926,793) (3,166,079) 1,339,286 (39,1%) Net p accounts receivable 24,894,581 11,094,459 13,800,122 124.4% Other receiv. & phys. advances 23,107,256 15,882,788 7,224,469 45,5% Misc receivables 29,699,604 22,873,808 6,825,797 29,8% Physician advances 27,070 264,477 3,223 12,8% Total other receivables 29,699,604 22,873,808 6,825,797 29,8% Inventories 1,170,647 1,205,593 33,945 (30,9%) Prepaid expenses & deposits 740,469 789,846 (49,378) (5,3%) Total imited use suses 5,372,456 5,498,312 (125,856) (2,3%) Total imited use assets <td></td> <td>¢3 000 0E1</td> <td>¢11 404 417</td> <td>(\$0.31E ECC)</td> <td>/01 70/\</td>		¢3 000 0E1	¢11 404 417	(\$0.31E ECC)	/01 70/\
Patient accounts receivable:	·			• • • • • •	
Gross pt accounts receivable 81,064,255 51,677,852 29,391,403 56,9% Contractual allowances (54,242,881) (37,412,314) (16,830,567) 45,0% Provision for bad debts & charity (1,926,793) (3,166,079) 1,239,286 (39,1%) Net pt accounts receivable 24,894,581 11,094,459 13,800,122 124,4% Other receiv. & phys. advances 23,107,256 15,882,788 7,224,469 45,5% Misc receivables 29,699,604 22,873,808 6,825,797 29,8% Inventories 1,170,647 1,206,593 (35,945) (3,0%) Inventories 7,40,469 789,846 (49,373) (6,3%) Total current assets 64,760,932 53,413,406 11,347,527 21,2% Assets limited as to use: 60 bond construction fund 9,372,456 5,498,312 (125,856) (2,3%) Total limited use assets 5,372,456 5,498,312 (125,856) (2,3%) Total improvements 45,382,391 44,849,285 533,106 1,2% <		0,100,760	0,044,265	122,437	2.076
Contractual allowances		01 064 255	E1 672 0E2	20 201 402	E 6 0%
Provision for bad debts & charity 1,926,793 3,166,079 1,239,286 39.1% Net pt accounts receivable 24,894,581 11,094,459 13,800,122 124.4% Other receiv. & phys. advances 7ax revenue receivable 6,324,648 6,726,543 401,935 60.0% Nisc receivables 23,107,256 15,882,788 7,224,469 45.5% Physician advances 267,700 264,477 3,223 1.2% Total other receivables 29,699,604 22,873,808 6,825,797 29.8% Inventories 1,170,647 1,206,593 353,945 3(3,35),945 3(3,36) Prepaid expenses & deposits 740,469 789,846 (49,378) (6,3%) Prepaid expenses & deposits 740,469 789,846 (49,378) (6,3%) Total current assets 5,372,456 5,498,312 (125,856) (2,3%) Total current assets 5,372,456 5,498,312 (125,856) (2,3%) Total limited use assets 5,372,456 5,498,312 (125,856) (2,3%) Total limited use assets 5,372,456 5,498,312 (125,856) (2,3%) Slidgs & bldg improvements 45,382,391 44,849,285 533,106 1.2% Leasshold improvements 607,391 607,3		, ,			
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Ray revenue receivable 6,324,648 6,726,543 (401,895) (6.0%) Misc receivables 23,107,256 15,827,788 7,224,469 45.5% Physician advances 26,7700 264,477 3,223 1.2% Total other receivables 29,699,604 22,873,803 6.825,797 29.8% 1,700,647 1,206,593 35,945 30.0%) Prepaid expenses & deposits 740,469 789,846 4(9,378) 6.3%] Total current assets 740,469 789,846 4(9,378) 740,278 789,8412 4(125,856) 4(3,3%) 740,469 789,846 4(9,378) 740,278 789,8412 4(125,856) 4(3,3%) 740,478 789,8412 4(125,856) 4(3,3%) 740,4812	•	24,034,301	11,054,435	13,800,122	124.470
Misc receivables 23,107,256 15,882,788 7,224,469 45.5% Physician advances 267,700 264,477 3,223 1.2% Total other receivables 29,699,604 22,873,808 6,825,797 29.8% Inventories 1,170,647 1,206,593 35,945 3.0%) Prepaid expenses & deposits 740,469 789,846 (49,378) 6.3% Total current assets 64,760,932 53,413,406 11,347,527 21.2% Assets limited as to use: GO bond construction fund 5,372,456 5,498,312 (125,856) (2,3%) Total limited use assets 5,372,456 5,498,312 (125,856) (2,3%) Total dand improvements 3,301,871 3,301,871 - 0,0% Bidgs & bidg improvements 45,382,391 44,849,285 533,106 1.2% Leasehold improvements 607,391 607,391 0,0% 6,391,770 0.0% Major movable equipment 38,262,91 3,893,909 2,369,083 6,5% Con		6 324 648	6 726 543	(401 895)	(6.0%)
Physician advances 267,700 264,477 3,223 1,2% Total other receivables 29,699,604 22,873,808 6,252,797 29,8% Inventories 1,170,647 1,206,593 (35,945) (3,0%) Prepaid expenses & deposits 740,469 789,846 (49,378) (6,3%) Total current assets 64,760,932 53,413,406 11,347,527 21,2% Assets limited as to use: GO bond construction fund 5,372,456 5,498,312 (125,856) (2,3%) Total limited use assets Capital assets: Lag lag lag improvements 3,301,871 3,301,871 0,0% Bidgs & bidg improvements 607,391 607,391 60,391 0,0% Major movable equipment 38,262,991 35,893,909 2,369,083 6,6% Construction in progress 142,236,501 138,188,920 4,047,581 2,9% Accumulated depreciation (64,019,159) 66,992,711 1,097,048 1,7% Net assult insurance costs & other assets					
Total other receivables 29,699,604 22,873,808 6,825,797 29.8% Inventories 1,170,647 1,206,593 (35,945) (3.0%) 740,469 789,846 (49,378) (6.3%) 740,469 789,846 (49,378) (6.3%) 740,469 789,846 (49,378) (6.3%) 740,469 789,846 (49,378) (6.3%) 740,469 789,846 (49,378) (6.3%) 740,469 789,846 (49,378) (6.3%) 740,469 789,846 (49,378) (6.3%) 740,469 789,846 (49,378) (49,378) (6.3%) 740,460 789,846 789,8412 7					
Inventories	•	45			***************************************
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Assets limited as to use: GO bond construction fund S,372,456 S,498,312 (125,856) (2.3%) Total limited use assets S,372,456 S,498,312 (125,856) (2.3%) Total limited use assets S,372,456 S,498,312 (125,856) (2.3%) Capital assets: Land & land improvements 3,301,871 3,301,871 - 0.0% Bidgs & bidg improvements 45,382,391 44,849,285 533,106 1.2% Leasehold improvements 607,391 607,391 - 0.0% Major movable equipment 38,262,991 35,893,909 2,369,083 6.6% Construction in progress 142,236,501 138,188,920 4,047,581 2.9% Gross capital assets 229,791,145 222,841,376 6,949,770 3.1% Accumulated depreciation (64,019,159) (62,922,112) (1,097,048) 1.7% Net capital assets 165,771,986 159,919,264 5,857,722 3.7% Bond issuance costs & other assets 450,941 585,183 (134,242) (22.9%) Intercompany receivable - 401,418 (401,418) (100.0%) TOTAL ASSETS \$236,356,315 \$219,817,583 \$16,538,733 7.5% Current liabilities: 7,014,366 5,184,360 1,830,007 35.3% Accounts payable 19,675,741 13,473,820 6,201,921 46.0% Cother accrued liabilities 7,014,366 5,184,360 1,830,007 35.3% Accrued payroll & related liabilities 7,014,366 5,184,360 1,830,007 35.3% Accrued payroll & related liabilities 29,236,839 20,365,112 8,871,728 43.6% Long-term liabilities: 29,236,839 20,365,112 8,871,728 43.6% Long-term liabilities: 29,236,839 20,365,112 8,871,728 43.6% TOTAL LABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 61,96,432 9,223,10,41 9,332,886 10.1% Intercompany payable - 401,418 401,418 (100.0%)					
Assets limited as to use: GO bond construction fund Restricted trust funds, other Total limited use assets 5,372,456 5,498,312 (125,856) (2.3%) Total limited use assets 8,301,871 8,40,285 8,533,006 1.2% Leasehold improvements 607,391					
GO bond construction fund 5,372,456 5,498,312 (125,856) (2.3%) Total limited use assets 5,372,456 5,498,312 (125,856) (2.3%) Capital assets: Land & land improvements 3,301,871 3,301,871 - 0.0% Bidgs & bidg improvements 45,382,391 44,849,285 533,106 1.2% Leasehold improvements 607,391 607,391 - 0.0% Major movable equipment 38,262,991 35,893,909 2,369,083 6.6% Construction in progress 142,236,501 138,188,902 4,947,581 2.9% Gross capital assets 229,791,145 222,841,376 6,949,770 3.1% Accumulated depreciation (64,019,159) (62,922,112) (1,097,048) 1.7% Net capital assets 165,771,986 159,919,264 5,852,722 3.7% Bond issuance costs & other assets 450,941 585,183 (134,242) (22,9%) Intercompany receivable 45,852,318 \$219,817,583 \$16,538,733 7.5% Current liabilities: 20	total cuttent assets	04,700,332	33,413,400	11,347,327	21.270
GO bond construction fund 5,372,456 5,498,312 (125,856) (2.3%) Total limited use assets 5,372,456 5,498,312 (125,856) (2.3%) Capital assets: Land & land improvements 3,301,871 3,301,871 - 0.0% Bidgs & bidg improvements 45,382,391 44,849,285 533,106 1.2% Leasehold improvements 607,391 607,391 - 0.0% Major movable equipment 38,262,991 35,893,909 2,369,083 6.6% Construction in progress 142,236,501 138,188,902 4,947,581 2.9% Gross capital assets 229,791,145 222,841,376 6,949,770 3.1% Accumulated depreciation (64,019,159) (62,922,112) (1,097,048) 1.7% Net capital assets 165,771,986 159,919,264 5,852,722 3.7% Bond issuance costs & other assets 450,941 585,183 (134,242) (22,9%) Intercompany receivable 45,852,318 \$219,817,583 \$16,538,733 7.5% Current liabilities: 20	Assets limited as to use:				
Restricted trust funds, other 5,372,456 5,498,312 (125,856) (2.3%) Total limited use assets 5,372,456 5,498,312 (125,856) (2.3%) Capital assets: Land & land improvements 3,301,871 3,301,871 - 0.0% Bidgs & bldg improvements 45,382,391 44,849,285 533,106 1.2% Leasehold improvements 607,391 607,391 5,369,083 6.6% Construction in progress 142,236,501 138,188,920 4,047,581 2.9% Gross capital assets 229,791,145 222,841,376 6,949,770 3.1% Accumulated depreciation (64,019,159) (62,922,112) (1,097,048) 1.7% Net capital assets 450,941 585,183 (134,242) (22.9%) Intercompany receivable - 401,418 (401,418) (400,0%) TOTAL ASSETS \$236,356,315 \$219,817,583 \$16,538,733 7.5% Current liabilities 7,014,366 5,184,360 1,800,271 (0.5%) Accounts payable		-		_	0.0%
Capital assets		5.372.456	5.498.312	(125,856)	
Capital assets: Same and a same as a	•				
Land & land improvements 3,301,871 3,301,871 - 0.0% Bidgs & bldg improvements 45,382,391 44,849,285 533,106 1.2% Leasehold improvements 607,391 - 0.0% 0.0% Major movable equipment 38,262,991 35,893,909 2,369,083 6,6% Construction in progress 142,236,501 138,188,920 4,047,581 2.9% Gross capital assets 229,791,145 222,841,376 6,949,770 3.1% Accumulated depreciation (64,019,159) (62,922,112) (1,097,048) 1.7% Net capital assets 450,941 585,183 (134,242) (22.9%) Intercompany receivable - 401,418 (401,418) (100,0%) TOTAL ASSETS \$236,356,315 \$219,817,583 \$16,538,733 7.5% Current liabilities: ***	Total Inflicta and and and and and and and and and an	3,3,2,130	3, 130,312	(123,030)	(2.070)
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Bidgs & bldg improvements 45,382,391 44,849,285 533,106 1.2% Leasehold improvements 607,391 607,391 - 0.0% Major movable equipment 38,262,991 35,893,909 2,369,083 6.6% Construction in progress 142,236,501 138,188,920 4,047,581 2.9% Gross capital assets 229,791,145 222,841,376 6,949,770 3.1% Accumulated depreciation (64,019,159) (62,922,112) (1,097,048) 1.7% Net capital assets 450,941 585,183 (134,242) (22.9%) Intercompany receivable - 401,418 (401,418) (100.0%) TOTAL ASSETS \$236,356,315 \$219,817,583 \$16,538,733 7.5% Current liabilities: \$2,072,413 \$2,082,684 (\$10,271) (0.5%) Accounts payable 19,675,741 13,473,820 6,201,921 46.0% Other accrued liabilities 7,014,366 5,184,360 1,830,007 35.3% Accounts payable 440,000 180,000 260,000 </td <td>•</td> <td>3.301.871</td> <td>3.301.871</td> <td><u></u></td> <td>0.0%</td>	•	3.301.871	3.301.871	<u></u>	0.0%
Leasehold improvements 607,391 607,391 - 0.0% Major movable equipment 38,262,991 35,893,909 2,369,083 6.6% Construction in progress 142,236,501 138,188,920 4,047,581 2.9% Gross capital assets 229,791,145 222,841,376 6,949,770 3.1% Accumulated depreciation (64,019,159) (62,922,112) (1,097,048) 1.7% Net capital assets 450,941 585,183 (134,242) (22.9%) Bond issuance costs & other assets 450,941 585,183 (134,242) (22.9%) Intercompany receivable - 401,418 (401,418) (100.0%) TOTAL ASSETS \$236,356,315 \$219,817,583 \$16,538,733 7.5% Current liabilities: \$2,072,413 \$2,082,684 (\$10,271) (0.5%) Accounts payable 19,675,741 13,473,820 6,201,921 46.0% Other accrued liabilities 7,014,366 5,184,360 1,830,007 35.3% Accrued payroll & related liabilities 2,252,683 2,5				533.106	
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Net capital assets 165,771,986 159,919,264 5,852,722 3.7% Bond issuance costs & other assets 450,941 585,183 (134,242) (22.9%) Intercompany receivable - 401,418 (401,418) (100.0%) TOTAL ASSETS \$236,356,315 \$219,817,583 \$16,538,733 7.5% Current liabilities: Current maturities of debt borrowings \$2,072,413 \$2,082,684 (\$10,271) (0.5%) Accounts payable 19,675,741 13,473,820 6,201,921 46.0% Other accrued liabilities 7,014,366 5,184,360 1,830,007 35.3% Accrued payroll & related liabilities - 8,056 (8,056) (100.0%) Est current 3rd party payor settlements 34,319 (563,808) 598,127 (106.1%) Self insurance program accrual 440,000 180,000 260,000 144.4% Total current liabilities: 29,236,839 20,365,112 8,871,728 43.6% Deferred revenue 5,482,558 5,729,564 (247,006) (•				
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TOTAL ASSETS S236,356,315 \$219,817,583 \$16,538,733 7.5%	•		, ,	, ,	
TOTAL ASSETS S236,356,315 \$219,817,583 \$16,538,733 7.5%	Bond issuance costs & other assets	450,941	585,183	(134,242)	(22.9%)
TOTAL ASSETS \$236,356,315 \$219,817,583 \$16,538,733 7.5% Current liabilities: Current maturities of debt borrowings \$2,072,413 \$2,082,684 (\$10,271) (0.5%) Accounts payable 19,675,741 13,473,820 6,201,921 46.0% Other accrued liabilities 7,014,366 5,184,360 1,830,007 35.3% Accrued payroll & related liabilities - 8,056 (8,056) (100.0%) Est current 3rd party payor settlements 34,319 (563,808) 598,127 (106.1%) Self insurance program accrual 440,000 180,000 260,000 144.4% Total current liabilities: 29,236,839 20,365,112 8,871,728 43.6% Long-term liabilities: Deferred revenue 5,482,558 5,729,564 (247,006) (4.3%) Debt borrowings, net of curr maturities 99,932,991 100,950,448 (1,017,457) (1.0%) TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: <t< td=""><td>Intercompany receivable</td><td>-</td><td></td><td></td><td></td></t<>	Intercompany receivable	-			
Current maturities of debt borrowings \$2,072,413 \$2,082,684 (\$10,271) (0.5%) Accounts payable 19,675,741 13,473,820 6,201,921 46.0% Other accrued liabilities 7,014,366 5,184,360 1,830,007 35.3% Accrued payroll & related liabilities - 8,056 (8,056) (100.0%) Est current 3rd party payor settlements 34,319 (563,808) 598,127 (106.1%) Self insurance program accrual 440,000 180,000 260,000 144.4% Total current liabilities: 29,236,839 20,365,112 8,871,728 43.6% Long-term liabilities: 5,482,558 5,729,564 (247,006) (4.3%) Deferred revenue 5,482,558 5,729,564 (247,006) (4.3%) Debt borrowings, net of curr maturities 99,932,991 100,950,448 (1,017,457) (1.0%) TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: 6,196,432 9,722,686 (3,526,254) (36.3%) Total net as	TOTAL ASSETS	\$236,356,315			
Current maturities of debt borrowings \$2,072,413 \$2,082,684 (\$10,271) (0.5%) Accounts payable 19,675,741 13,473,820 6,201,921 46.0% Other accrued liabilities 7,014,366 5,184,360 1,830,007 35.3% Accrued payroll & related liabilities - 8,056 (8,056) (100.0%) Est current 3rd party payor settlements 34,319 (563,808) 598,127 (106.1%) Self insurance program accrual 440,000 180,000 260,000 144.4% Total current liabilities: 29,236,839 20,365,112 8,871,728 43.6% Long-term liabilities: 5,482,558 5,729,564 (247,006) (4.3%) Deferred revenue 5,482,558 5,729,564 (247,006) (4.3%) Debt borrowings, net of curr maturities 99,932,991 100,950,448 (1,017,457) (1.0%) TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: 6,196,432 9,722,686 (3,526,254) (36.3%) Total net as					
Accounts payable 19,675,741 13,473,820 6,201,921 46.0% Other accrued liabilities 7,014,366 5,184,360 1,830,007 35.3% Accrued payroll & related liabilities - 8,056 (8,056) (100.0%) Est current 3rd party payor settlements 34,319 (563,808) 598,127 (106.1%) Self insurance program accrual 440,000 180,000 260,000 144.4% Total current liabilities 29,236,839 20,365,112 8,871,728 43.6% Long-term liabilities: Deferred revenue 5,482,558 5,729,564 (247,006) (4.3%) Debt borrowings, net of curr maturities 99,932,991 100,950,448 (1,017,457) (1.0%) TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)	Current liabilities:				
Other accrued liabilities 7,014,366 5,184,360 1,830,007 35.3% Accrued payroll & related liabilities - 8,056 (8,056) (100.0%) Est current 3rd party payor settlements 34,319 (563,808) 598,127 (106.1%) Self insurance program accrual 440,000 180,000 260,000 144.4% Total current liabilities 29,236,839 20,365,112 8,871,728 43.6% Long-term liabilities: Deferred revenue 5,482,558 5,729,564 (247,006) (4.3%) Debt borrowings, net of curr maturities 99,932,991 100,950,448 (1,017,457) (1.0%) TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)	Current maturities of debt borrowings	\$2,072,413	\$2,082,684	(\$10,271)	(0.5%)
Accrued payroll & related liabilities - 8,056 (8,056) (100.0%) Est current 3rd party payor settlements 34,319 (563,808) 598,127 (106.1%) Self insurance program accrual 440,000 180,000 260,000 144.4% Total current liabilities 29,236,839 20,365,112 8,871,728 43.6% Long-term liabilities: Deferred revenue 5,482,558 5,729,564 (247,006) (4.3%) Debt borrowings, net of curr maturities 99,932,991 100,950,448 (1,017,457) (1.0%) TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)	Accounts payable	19,675,741	13,473,820	6,201,921	46.0%
Est current 3rd party payor settlements 34,319 (563,808) 598,127 (106.1%) Self insurance program accrual 440,000 180,000 260,000 144.4% Total current liabilities 29,236,839 20,365,112 8,871,728 43.6% Long-term liabilities: Deferred revenue 5,482,558 5,729,564 (247,006) (4.3%) Debt borrowings, net of curr maturities 99,932,991 100,950,448 (1,017,457) (1.0%) TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)	Other accrued liabilities	7,014,366	5,184,360	1,830,007	35.3%
Self insurance program accrual 440,000 180,000 260,000 144.4% Total current liabilities 29,236,839 20,365,112 8,871,728 43.6% Long-term liabilities: Use a series of current liabilities: Deferred revenue 5,482,558 5,729,564 (247,006) (4.3%) Debt borrowings, net of curr maturities 99,932,991 100,950,448 (1,017,457) (1.0%) TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)	Accrued payroll & related liabilities	•	8,056	(8,056)	(100.0%)
Total current liabilities 29,236,839 20,365,112 8,871,728 43.6% Long-term liabilities: Deferred revenue 5,482,558 5,729,564 (247,006) (4.3%) Debt borrowings, net of curr maturities 99,932,991 100,950,448 (1,017,457) (1.0%) TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)	Est current 3rd party payor settlements	34,319	(563,808)	598,127	(106.1%)
Long-term liabilities: Deferred revenue 5,482,558 5,729,564 (247,006) (4.3%) Debt borrowings, net of curr maturities 99,932,991 100,950,448 (1,017,457) (1.0%) TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)	Self insurance program accrual	440,000	180,000	260,000	144.4%
Deferred revenue 5,482,558 5,729,564 (247,006) (4.3%) Debt borrowings, net of curr maturities 99,932,991 100,950,448 (1,017,457) (1.0%) TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)	Total current liabilities	29,236,839	20,365,112	8,871,728	43.6%
Deferred revenue 5,482,558 5,729,564 (247,006) (4.3%) Debt borrowings, net of curr maturities 99,932,991 100,950,448 (1,017,457) (1.0%) TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)					
Debt borrowings, net of curr maturities 99,932,991 100,950,448 (1,017,457) (1.0%) TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)	•				
TOTAL LIABILITIES 134,652,388 127,045,124 7,607,265 6.0% Net assets: Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)		5,482,558	5,729 <i>,</i> 564	(247,006)	(4.3%)
Net assets: Petained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)	•				
Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)	TOTAL LIABILITIES	134,652,388	127,045,124	7,607,265	6.0%
Retained Earnings 95,507,495 82,648,355 12,859,141 15.6% Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)	No. 1 and 1 and 1				
Increase in net assets 6,196,432 9,722,686 (3,526,254) (36.3%) Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)		05 50= :05	02.510.555	10.050 111	
Total net assets 101,703,927 92,371,041 9,332,886 10.1% Intercompany payable - 401,418 (401,418) (100.0%)	_				
Intercompany payable - 401,418 (401,418) (100.0%)					
	I otal net assets	101,/03,927	92,3/1,041	9,332,886	10.1%
	laboratoria anti-acceptat		404 440	(404 440)	14.00.00()
101 AL LIABILITIES & NET ASSETS \$236,556,515 \$219,817,583 \$16,538,733 7.5%					
	TOTAL LIABILITIES & NET ASSETS	\$250,350,315	\$617,817,583	\$10,558,733	7.5%

TULARE REGIONAL MEDICAL CENTER Statement of revenue and expenditures Summary of All Units For the Twelve Months Ending 6/30/2017

				For the (welve Months Ending 6/30/20)	17			
	Current q					Year to		
This year	Last year	YOY	% ∆	_	This year	Last year	YOY	%Δ
\$14,789,457	\$14,531,467	\$257,990	1.8%	Net patient revenue	\$58,458,814	\$60,604,438	(\$2,145,624)	(3.5%)
2,405,918	4,468,875	(2,062,957)	(46.2%)	Supplemental funds	17,614,577	15,672,733	1,941,844	12.4%
178,876	1,557,649	(1,378,772)	(88.5%)	Other operating revenue	2,566,603	3,961,050	(1,394,447)	(35.2%)
17,374,251	20,557,991	(3,183,740)	(15.5%)	Total operating revenue	78,639,994	80,238,221	(1,598,228)	(2.0%)
(118)	(54,775)	54,657	(99.8%)	Salaries & wages	0	(27,716)	27,716	(100.0%)
(1,730)	(35,605)	33,875	(95.1%)	Employee benefits	(1)	(142,098)	142,097	(100.0%)
2,095,316	1,592,587	502,729	31.6%	Professional fees	7,127,368	6,594,120	533,248	8.1%
1,778,652	1,415,516	363,135	25.7%	Professional fees, physicians	6,301,287	5,182,458	1,118,829	21.6%
2,792,624	2,734,791	57,833	2.1%	Supplies	8,834,964	9,988,172	(1,153,208)	(11.5%)
2,978,468	2,729,895	248,573	9.1%	Purchased services	11,414,565	10,762,242	652,323	6.1%
9,728,207	12,012,640	(2,284,433)	(19.0%)	Purchased HCCA Labor	37,175,945	36,992,270	183,676	0.5%
135,476	188,058	(52,581)	(28.0%)	Repairs & maintenance	472,582	345,953	126,629	36.6%
413,116	393,620	19,496	5.0%	Utilities & phone	1,560,939	1,559,182	1,757	0.1%
271,886	201,387	70,499	35.0%	Building & equipment rental	637,746	803,356	(165,610)	(20.6%)
484,212	243,428	240,784	98.9%	Insurance	1,270,010	814,735	455,275	55.9%
452,943	401,681	51,261	12.8%	Other operating expenses	1,877,028	1,369,831	507,197	37.0%
21,129,052	21,823,223	(694,172)	(3.2%)	Operating expenses before D&A	76,672,433	74,242,505	2,429,928	3.3%
(3,754,801)	(1,265,232)	(2,489,568)	196.8%	EBITDA	1,967,561	5,995,716	(4,028,156)	(67.2%)
468,342	(622,156)	1,090,499	175.3%	Depreciation & amortization	(3,375,244)	(3,607,430)	232,186	(6.4%)
1,071,529	1,338,784	(267,255)	(20.0%)	Property tax income	6,742,778	7,186,334	(443,556)	(6.2%)
51,153	39,627	11,526	29.1%	Investment income	122,769	145,709	(22,940)	(15.7%)
(266,532)	(187,285)	(79,248)	42.3%	Interest expense	(837,953)	(771,434)	(66,519)	8.6%
51,722	407,590	(355,868)	(87.3%)	Grants & contributions	519,856	769,812	(249,956)	(32.5%)
-	14	(14)	(100.0%)	Other income	1,055,401	4,136	1,051,264	25415.0%
1,376,214	976,574	399,640	40.9%	Total other revenue/(expenses)	4,227,607	3,727,127	500,481	13.4%
(2,378,587)	(288,658)	(2,089,927)	724.0%	Excess of revenues over expenses	6,195,168	9,722,843	(3,527,676)	(36.3%)
(\$2,378,587)	(\$288,658)	(\$2,089,927)	724.0%	Increase in net assets	\$6,195,168	\$9,722,843	(\$3,527,676)	(36.3%)

TULARE REGIONAL MEDICAL CENTER Balance Sheet for the period ended Friday, March 31, 2017 unaudited

	This year	Last year	Increase/ (Decrease)	Inc/(Dec) percentage
Current assets:				
Cash and cash equivalents	\$3,622,318	\$12,472,924	(\$8,850,607)	(71.0%)
Ltd use assets avail for curr debt sive	6,044,283	7,631,447	(1,587,164)	(20.8%)
Patient accounts receivable:				
Gross pt accounts receivable	58,560,394	51,490,788	7,069,606	13.7%
Contractual allowances	(35,936,819)	(37,119,948)	1,183,129	(3.2%)
Provision for bad debts & charity	(2,352,594)	(2,880,785)	528,191	(18.3%)
Net pt accounts receivable	20,270,981	11,490,054	8,780,927	76.4%
Other receiv. & phys. advances				
Tax revenue receivable	2,019,890	370,927	1,648,963	444.6%
Misc receivables	23,589,793	13,740,727	9,849,066	71.7%
Physician advances	265,200	269,754	(4,554)	(1.7%)
Total other receivables	25,874,883	14,381,408	11,493,475	79.9%
Inventories	1,707,211	1,187,202	520,009	43.8%
Prepaid expenses & deposits	638,319	1,007,694	(369,375)	(36.7%)
Total current assets	58,157,994	48,170,730	9,987,265	20.7%
-		• • • • • •	, ,	
Assets limited as to use:				0.09/
GO bond construction fund	- -	000 407	- - 427.005	0.0%
Restricted trust funds, other	6,114,313	986,407	5,127,905	519.9%
Total limited use assets	6,114,313	986,407	5,127,905	519.9%
Capital assets:				
Land & land improvements	3,301,871	3,301,871	. •	0.0%
Bldgs & bldg improvements	44,874,043	44,316,446	557,598	1.3%
Leasehold improvements	607,391	221,774	385,616	173.9%
Major movable equipment	36,120,007	35,857,794	262,213	0.7%
Construction in progress	147,441,505	138,805,772	8,635,733	6.2%
Gross capital assets	232,344,817	222,503,657	9,841,160	4.4%
Accumulated depreciation	(67,437,047)	(62,299,956)	(5,137,091)	8.2%
Net capital assets	164,907,770	160,203,702	4,704,069	2.9%
Bond Issuance costs & other assets	778,255	931,505	(153,250)	(16.5%)
Intercompany receivable	89,142	545,457	(456,315)	(83.7%)
TOTAL ASSETS	\$230,047,474	\$210,837,801	\$19,209,673	9.1%
Current liabilities:	An	.	**	
Current maturities of debt borrowings	\$3,682,258	\$2,394,550	\$1,287,708	53.8%
Accounts payable	15,957,708	12,222,057	3,735,651	30.6%
Other accrued liabilities	1,865,558	1,855,774	9,784	0.5%
Accrued payroll & related liabilities	(736,946)	(710,641)	(26,305)	3.7%
Est current 3rd party payor settlements	(316,808)	(978,939)	662,131	(67.6%)
Self insurance program accrual	(489,701)	137,143	(626,844)	(457.1%)
Total current liabilities	19,962,069	14,919,943	5,042,125	33.8%
Long-term llabilities:				
Deferred revenue	7,355,406	5,137,898	2,217,508	43.2%
Debt borrowings, net of curr maturities	101,599,111	104,617,574	(3,018,462)	(2.9%)
TOTAL LIABILITIES	128,916,585	124,675,415	4,241,170	3,4%
Net assets;				
Retained Earnings	92,815,959	76,151,043	16,664,916	21,9%
Increase in net assets	8,279,502	10,011,344	(1,731,842)	(17.3%)
Total net assets	101,095,461	86,162,386	14,933,074	17.3%
	SP 480		75.400	0.000
Intercompany payable	35,428	A-40-400-1-1	35,428	0.0%
TOTAL LIABILITIES & NET ASSETS	\$230,047,474	\$210,837,801	\$19,209,673	9.1%

TULARE REGIONAL MEDICAL CENTER Statement of revenue and expenditures

For the Nine Months Ending Friday, March 31, 2017 Current quarter This year Year to date Last year YOY %∆ This year Last year YOY \$11,892,255 % ∆ \$13,894,014 (\$2,001,759) (14.4%)Net patient revenue \$43,669,758 \$46,075,594 (\$2,405,836) 7,972,735 (5.2%) 4,549,153 3,423,582 75.3% Supplemental funds 15,208,659 11,203,858 4,004,801 35.7% 1,729,723 705,082 1,024,641 145.3% Other operating revenue 2,387,726 2,403,243 (15,517)(0.5%)21,594,714 19,148,249 2,446,464 12.8% Total operating revenue 61,266,143 59,682,696 1,583,448 2.7% 0 0 0.0% Salaries & wages 118 27,060 (26,942)(99.6%)0.0% **Employee benefits** 1,729 (105,493)2,156,374 108,222 101.6% 1,677,906 478,468 28.5% Professional fees 5,032,052 5,001,533 30,519 1,697,927 0.6% 1,324,764 373,163 28.2% Professional fees, physicians 4,515,436 3,766,942 748,494 1,770,046 19.9% 2,201,100 (431,053)(19.6%)Supplies 6,125,679 7,253,382 (1,127,702)2,168,895 (15.5%)2,242,266 (73,370)(3.3%)Purchased services 8,440,738 8,032,347 408,392 8,784,014 5.1% 8,273,126 510,888 6.2% Purchased HCCA Labor 27,665,404 24,979,629 206,958 2,685,775 10.8% 19,036 187,922 987.2% Repairs & maintenance 337,105 157,895 179,210 290,699 304,158 113.5% (13,458)(4.4%)Utilities & phone 1,148,282 1,165,562 (17,280)202,614 (1.5%)210,584 (7,970) (3.8%)**Building & equipment rental** 365,860 601,969 (236,109) 289,316 (39.2%)277,025 12,291 4.4% Insurance 785,798 571,306 214,491 37.5% 461,643 193,158 268,486 139.0% Other operating expenses 1,419,432 968,150 451,282 46.6% 18,028,487 16,723,121 1,305,366 7.8% Operating expenses before D&A 55,837,634 52,419,282 3,418,352 3,566,227 6.5% 2,425,129 1,141,098 47.1% **EBITDA** 5,428,509 7,253,413 (1,834,904) (25.3%)(3,531,841) (1,068,136)(2,463,705)230.7% Depreciation & amortization (3,843,586)(2,985,273)(858,313) 28.8% 1,961,121 1,955,172 5,949 Property tax income 0.3% 5,671,249 5,847,550 (176,301)13,152 (3.0%)58,087 (44,934)(77.4%)Investment income 71,616 106,082 (34,465)(32.5%)(186,679)(198,308)11,628 (5.9%)Interest expense (571,420)(584,149)12,729 45,133 (2.2%)88,029 (42,896)(48.7%) Grants & contributions 468,134 362,222 105,912 29.2% 1,055,000 1,500 1,053,500 70233,3% Other income 1,055,000 1,500 1,053,500 70233.3% (544,114)836,344 (1,480,458) (177.0%)Total other revenue/(expenses) 2,850,993 2,747,931 103,062 3.8%

Excess of revenues over expenses

Increase in net assets

8,279,502

\$8,279,502

10,011,344

\$10,011,344

(1,731,842)

(\$1,731,842)

(17.3%)

(17.3%)

2,922,113

\$2,922,113

3,261,473

\$3,261,473

(339,360)

(\$339,360)

(10.4%)

(10.4%)

Tulare Regio Medical Center Financial Statistics Summary March 31, 2017

		Current Mo	nth		Year-to-Date						
	Actual	Budget	Variance	% Var.	Actual	Budget	Varlance	% Var.	Prior year YTD	Increase/ (Decrease)	% Chg.
Inpatient Utilization											
Acute Patient Days	3,362	4,321	(959)	-22%	10,347	11,960	(1,613)	0%	12,577	(2,230)	-18%
Discharges	681	798	(117)	-15%	2,229	2,964	(735)	0%	2,657	(428)	-16%
Average Length of Stay	4.94	5.41	(0.48)	-9%	4.64	4.04	0.61	0%	4.32	0.32	8%
Discharges											
Medicare	240	279	(39)	-14%	743	883	(140)	0%	819	(76)	-9%
Medicare MC	47	43	4	9%	108	117	(9)	0%	103	5	5%
Medi-Cal	42	76	(34)	-45%	194	480	(286)	0%	344	(150)	-44%
Medi-Cal MC	272	279	(7)	-3%	867	1,051	(184)	0%	988	(121)	-12%
HMO/EEO	66	92	(26)	-28%	246	355	(10 9)	0%	326	(80)	-25%
Self-Pay	2	12	(10)	-83%	24	24	(O)	0%	40	(16)	-40%
Other	12	17	(5)	-29%	47	54	(7)	0%	37	10	27%
	681	798	(117)	-15%	2,229	2,964	•	0%	2,657	(428)	-16%
Case Mix Index											
Medicare	-	1.3575	(1.3575)	-100%	0.6833	1.3762	(0.6928)	0%	1.3073	(0.6240)	
Medi-Cal	-	0.8922	(0.8922)	-100%	0.4466	0.8434	(0.3968)	0%	0.9467	(0.5001)	-53%
Overall	-	1.0314	(1.0314)	-100%	0.5009	1.0051	(0.5042)	0%	1.0319	(0.5310)	-51%
Newborn Deliveries	122	147	(25)	-17%	408	863	(455)	0%	631	(223)	-35%
<u>Observation</u>											
Patients	-	131	(131)	-100%	408	1,111	(703)	0%	783	(375)	-48%
Hours	-	3,072	(3,072)	-100%	5,359	26,064	(20,705)	0%	30,737	(25,378)	-83%
Equivalent days	-	131	(131)	-100%	223	1,111	(888)	0%	859	(636)	-74%
Surgery Services											
Inpatient Cases	122	196	(74)	-38%	409	654	(245)	0%	537	(128	
Outpatient Cases	237	483	(246)	-51%	883	1,548	(665)	0%	1,371	(488) -36%
Total surgeries	359	679	(320)	-47%	1,292	2,202	**	0%	1,908	(616) -32%
Emergency Room											
Visits	9,254	8,735	51 9	6%	24,801	27,765	(2,964)	0%	24,700	101	. 0%
Admits	677	584	93	16%	1,793	1,743	50	0%	1,518	275	18%

Ancillary Services

Tulare Regio Medical Center Financial Statistics Summary March 31, 2017

-	Current Month			Year-to-Date							
	Actual	Budget	Variance	% Var.	Actual	Budget	Variance	% Var.	Prior year YTD	Increase/ (Decrease)	% Chg.
Inpatient				•				*			
Imaging Procedures	1,232	2,108	(876)	-42%	6,953	6,179	774	0%	6,206	747	12%
Lab Tests	-	29,613	(29,613)	-100%	36,216	86,317	(50,101)	0%	92,612	(56,396)	-61%
OutPatient											
Endoscopy Procedures	147	457	(310)	-68%	501	1,412	(911)	0%	968	(467)	-48%
Lab Tests	-	51,054	(51,054)	-100%	55,128	148,813	(93,685)	0%	145,065	(89,937)	-62%
Diag. radiology Procedures	876	7,377	(6,501)	-88%	8,575	21,251	(12,676)	0%	20,712	(12,137)	-59%
Nuclear Medicine Procedures	9	89	(80)	-90%	86	300	(214)	0%	185	(99)	-54%
MRI Procedures	68	337	(269)	-80%	439	1,085	(646)	0%	901	(462)	-51%
Ultrasound Procedures	326	1,785	(1,459)	-8 2%	2,448	5,367	(2,919)	0%	5,521	(3,073)	-56%
CT Procedures	78	1,283	(1,205)	-94%	1,729	3,891	(2,162)	0%	3,911	(2,182)	-56%
Clinics											
Primary Care Visits	3,505	3,723	(218)	-6%	10,232	11,275	(1,043)	0%	12,323	(2,091)	-17%
Specialty Care Visits	706	1,952	(1,246)	-64%	1,992	5,947	(3,955)	0%	3,747	(1,755)	-47%
Home Health											
Visits	583	290	293	101%	1,807	2,457	(650)	0%	2,048	(241)	-12%
Staffing											
Paid FTE's	408	37 9	29	8%	413	379	34	0%	397	16	4%
Productive FTE's	362	347	15	4%	365	347	18	0%	353	12	. 3%
Paid FTE's/AOB	4.43	3.87	0.56	14%	4.85	3.97	0.88	0%	4.23	0.62	15%
Worked FTE's/AOB	3.93	3.54	0.39	11%	4.29	4.08	0.22	0%	4.15	0.14	3%
Revenue/Costs											
OP Revenue/Adjusted Discharge	13,950	9,529	4,421	46%	7,460	9,659	(2,199)	0%	10,090	(2,630)	-26%
Cost/Adjusted Discharge	12,062	8,504	3,559	42%	7,836	8,779	(943)	0%	. 9,367	(1,532)	-16%
Net Operating Gain/(Loss) \$	2,922,112	2,179,498	742,614	34%	485,314	5,768,704	(5,283,391)	0%	4,279,642	(3,794,329)) -89%
Net Operating Gain/(Loss) %	13.5%	10.8%	2.8%	26%	0.9%	9.2%	-8.2%	0%	7.2%	-6.2%	6 -87%



September 28, 2017

Via email and U.S. Mail

Timothy Thompson, Esq. McCormick Barstow, LLP 7647 North Fresno Street Fresno, CA 93729-8912

Subject: Request for a Special Meeting to Discuss the District's Finances and Possible Loans

Dear Mr. Thompson,

During the Board's open session meeting yesterday afternoon, I discussed the dire cash flow issue facing the Hospital and distributed the Q4 2017 financials, which, for your convenience, I have attachboard meeted to this email and have enclosed in the version that I am mailing to you. The same document was distributed at the July 25, 2017 meeting of the Finance Committee of the Board, and on September 12, 2017, was emailed to you by HCCA's counsel. I will not repeat here what I said yesterday, but want to point out that the balance sheet shows \$2,088,851 of cash and \$29,236,839 of current liabilities as of June 30, 2017. And while it also reflects almost \$25 million of net patient receivables and almost \$30 million of other receivables, those assets do not solve the liquidity problem that the District faced on June 30, and the even greater one it faces today – as I described yesterday.

I said last night that HCCA has identified lenders that have an interest in providing cash infusions to the District as a way to bridge the CRITICAL liquidity crisis and to enable the Hospital to remain operational. At the same meeting last night, I also informed Kevin Northcraft that he can call for a special board meeting the next day (today) and resolve the cash crisis. He did not do so. I am therefore hereby requesting that pursuant to sections 1.b. or 1.c of the District bylaws, the Board conduct a special or an emergency meeting on Sunday, October 1, or Monday, October 2, the purpose of which will be for me to present the loan options to the Board and for the Board to consider and authorize the District to enter into a loan transaction. I again remind you that the District is COMPLETELY out of cash, that many vendors are threatening to cease providing goods and services, that the District lacks sufficient cash to fund the entire gross payroll and that



HCCA, which is owed in excess of \$7 million, is unwilling to extend further credit to the District. Without immediate approval for the District to obtain prompt funding, the only alternative will be for HCCA to move immediately to cease operations at the Hospital and to consider immediately a plan over the next several days to close the Hospital. We have already notified the California Department of Public Health today of the District's inability to fund payroll.

Your prompt consideration of this request is much appreciated.

Benny Benzeevi, MD

Tulare Regional Medical Center Financial Statistics Summary June 30, 2017

		Current Mo	onth		Year-to-Date						
	Actual	Budget	Variance	% Var.	Actual	Budget	Variance	% Var.	Prior year YTD	(Decrease)	% Chg.
Inpatient Utilization							•				
Acute Patient Days	3,082	3,477	(395)	-11%	13,429	15,437	(2,008)	-13%	16,257	(2,828)	-17%
Discharges	713	871	(158)	-18%	2,942	3,835	(893)	-23%	3,373	(431)	-13%
Average Length of Stay	4.32	3.99	0.33	8%	4.56	4.03	0.54	13%	4.40	0.17	4%
Discharges											
Medicare	255	265	(10)	-4%	998	1,149	(151)	-13%	1,082	(84)	-8%
Medicare MC	44	59	(15)	-25%	152	176	(24)	-13%	137	15	11%
Medi-Cal	53	117	(64)	-55%	247	597	(350)	-59%	405	(158)	-39%
Medi-Cal MC	265	292	(27)	-9%	1,132	1,342	(210)	-16%	1,236	(104)	-8%
HMO/EEO	81	109	(28)	-26%	327	464	(137)	-30%	415	(88)	-21%
Seif-Pay	8	14	(6)	-43%	32	39	(7)	-17%	50	(18)	-36%
Other	7	15	(8)	-54%	54	69_	(15)	-21%	48	6	13%
	713	871	(158)	-18%	2,942	3,835	(893)	-23%	3,373	(431)	-13%
Case Mix Index											
Medicare	0.8940	1.7933	(0.8993)	-50%	1.2884	1.4005	(0.1121)	-8%	1.3287	(0.0403)	-3%
Medi-Cal	1.1070	0.8148	0.2922	36%	1.0178	0.8434	0.1744	21%	0.9509	0.0669	7%
Overail	0.9640	1.1373	(0.1733)	-15%	1.1191	1.0176	0.1015	10%	1.0527	0.0663	6%
Newborn Deliveries	120	276	(156)	-57%	528	1,139	(611)	-54%	750	(222)	-30%
Observation											
Patients	-	131	(131)	-100%	408	1,432	(1,024)	-72%	1,004	(596)	-59%
Hours	-	3,072	(3,072)	-100%	5,359	33,624	(28,265)	-84%	41,508	(36,149)	-87%
Equivalent days	-	131	(131)	-100%	223	1,432	(1,209)	-84%	1,114	(891)	-80%
Surgery Services											
Inpatient Cases	119	205	(86)	-42%	528	859	(331)	-39%	672	(144)	-21%
Outpatient Cases	260	488	(228)	-47%	1,143	2,036	(893)	-44%	1,787	(644)	-36%
Total surgeries	379	693	(314)	-45%	1,671	2,895	-	-42%	2,459	(788)	-32%
Emergency Room											
Visits	6,606	8,888	(2,282)	-26%	31,407	36,653	(5,246)	-14%	32,605	(1,198)	-4%
Admits	482	558	(76)	-14%	2,275	2,301	(26)	-1%	2,000	275	14%

TULARE REGIONAL MEDICAL CENTER Balance Sheet for the period ended 6/30/2017 unaudited

			Increase/	Inc/(Dec)
Command according	This year	Last year	(Decrease)	percentage
Current assets:	Ć1 000 0E1	¢11 404 417	/¢0.21E EGG\	(81.7%)
Cash and cash equivalents Ltd use assets avail for curr debt srvc	\$2,088,851 6,166,780	\$11,404,417 6,044,283	(\$9,315,566) 122,497	2.0%
Patient accounts receivable:	0,100,760	6,044,263	122,437	2.070
	81,064,255	51,672,852	29,391,403	56.9%
Gross pt accounts receivable		• •	•	45.0%
Contractual allowances	(54,242,881)	(37,412,314)	(16,830,567)	
Provision for bad debts & charity	(1,926,793)	(3,166,079)	1,239,286	(39.1%)
Net pt accounts receivable	24,894,581	11,094,459	13,800,122	124.4%
Other receiv. & phys. advances	C 224 C40	6 726 542	(404.005)	15.00()
Tax revenue receivable	6,324,648	6,726,543	(401,895)	(6.0%)
Misc receivables	23,107,256	15,882,788	7,224,469	45.5%
Physician advances	267,700	264,477	3,223	1.2%
Total other receivables	29,699,604	22,873,808	6,825,797	29.8%
Inventories	1,170,647	1,206,593	(35,945)	(3.0%)
Prepaid expenses & deposits	740,469	789,846	(49,378)	(6.3%)
Total current assets	64,760,932	53,413,406	11,347,527	21.2%
Assets limited as to use:				
GO bond construction fund	•	-	-	0.0%
Restricted trust funds, other	5,372,456	5,498,312	(125,856)	(2.3%)
Total limited use assets	5,372,456	5,498,312	(125,856)	(2.3%)
Capital assets:				
Land & land improvements	3,301,871	3,301,871		0.0%
Bldgs & bldg improvements	45,382,391	44,849,285	533,106	1.2%
Leasehold improvements	607,391	607,391	-	0.0%
Major movable equipment	38,262, 9 91	35,893,909	2,369,083	6.6%
Construction in progress	142,236,501	138,188,920	4,047,581	2.9%
Gross capital assets	229,791,145	222,841,376	6,949,770	3.1%
Accumulated depreciation	(64,019,159)	(62,922,112)	(1,097,048)	1.7%
Net capital assets	165,771,986	159,919,264	5,852,722	3.7%
Bond issuance costs & other assets	450,941	585,183	(134,242)	(22.9%)
Intercompany receivable		401,418	(401,418)	(100.0%)
TOTAL ASSETS	\$236,356,315	\$219,817,583	\$16,538,733	7.5%
Current liabilities:				
Current maturities of debt borrowings	\$2,072,413	\$2,082,684	(\$10,271)	(0.5%)
Accounts payable	19,675,741	13,473,820	6,201,921	46.0%
Other accrued liabilities	7,014,366	5,184,360	1,830,007	35.3%
Accrued payroll & related liabilities	, , -	8,056	(8,056)	(100.0%)
Est current 3rd party payor settlements	34,319	(563,808)	598,127	(106.1%)
Self insurance program accrual	440,000	180,000	260,000	144.4%
Total current liabilities	29,236,839	20,365,112	8,871,728	43.6%
Long-term liabilities:				
Deferred revenue	5,482,558	5,729,564	(247,006)	(4.3%)
Debt borrowings, net of curr maturities	99,932,991	100,950,448	(1,017,457)	(1.0%)
TOTAL LIABILITIES	134,652,388	127,045,124	7,607,265	6.0%
TOTAL ENDIETTES	154,052,500	127,043,124	7,007,203	0.070
Net assets:				
Retained Earnings	95,507,495	82,648,355	12,859,141	15.6%
Increase in net assets	6,196,432	9,722,686	(3,526,254)	(36.3%)
Total net assets	101,703,927	92,371,041	9,332,886	10.1%
Intercompany payable	-	401,418	(401,418)	(100.0%)
TOTAL LIABILITIES & NET ASSETS	\$236,356,315	\$219,817,583	\$16,538,733	7.5%
TO THE ENTER CITED OF THE LINGS IN	Y 0,000,010	T1021,000	7-3,555,755	

TULARE REGIONAL MEDICAL CENTER Statement of revenue and expenditures Summary of All Units For the Twelve Months Ending 6/30/2017

Year to date Current quarter This year YOY Last year YOY This year Last year \$14,789,457 \$14,531,467 \$257,990 1.8% Net patient revenue \$58,458,814 \$60,604,438 (\$2,145,624) (3.5%)2,405,918 4,468,875 (2,062,957) (46.2%) Supplemental funds 17,614,577 15,672,733 1,941,844 12.4% (1,378,772) (88.5%) Other operating revenue 2,566,603 3,961,050 (1,394,447) (35.2%) 178,876 1,557,649 78,639,994 80,238,221 (1,598,228) (2.0%) 17,374,251 20,557,991 (3,183,740) (15.5%) Total operating revenue (118)(54,775) 54,657 (27,716)27,716 (100.0%) (99.8%) Salaries & wages (142,098) 142,097 (100.0%) (1.730)(35,605) 33.875 (95.1%) Employee benefits (1) 533,248 2,095,316 1,592,587 502,729 31.6% Professional fees 7,127,368 6,594,120 8.1% 1,778,652 363,135 6,301,287 5,182,458 1,118,829 21.6% 1,415,516 25.7% Professional fees, physicians 2.792.624 2,734,791 57.833 2.1% Supplies 8,834,964 9.988.172 (1.153,208) (11.5%)2,978,468 2,729,895 248,573 9.1% Purchased services 11,414,565 10,762,242 652,323 6.1% 37,175,945 36,992,270 183,676 0.5% 9,728,207 12,012,640 (2,284,433) (19.0%) Purchased HCCA Labor 126,629 36.6% 135.476 188.058 (52,581)(28,0%) Repairs & maintenance 472.582 345,953 413,116 393,620 19,496 5.0% Utilities & phone 1,560,939 1,559,182 1,757 0.1% (20.6%) 271,886 201,387 70,499 35.0% Building & equipment rental 637,746 803,356 (165,610)240.784 814.735 55.9% 484.212 243.428 1.270.010 455.275 98.9% Insurance 452,943 401,681 51,261 12.8% Other operating expenses 1,877,028 1,369,831 507,197 37.0% 21,129,052 (694,172) 76,672,433 74,242,505 2.429.928 3.3% 21,823,223 (3.2%) Operating expenses before D&A (3,754,801) (1,265,232) (2,489,568) 196.8% EBITDA 1,967,561 5,995,716 (4,028,156) (67.2%)(3,607,430) 468,342 (622,156) 1,090,499 175.3% Depreciation & amortization (3,375,244) 232,186 (6.4%) 1,071,529 6,742,778 (443,556) 1,338,784 (267,255) (20.0%) Property tax income 7,186,334 (6.2%)39.627 122.769 145,709 (22.940) (15.7%) 51.153 11,526 29.1% Investment income (266,532)(187, 285)(79,248)42.3% Interest expense (837,953)(771,434)(66,519)8.6% 407,590 769,812 (249,956) 51,722 (355,868) (87.3%) Grants & contributions 519,856 (32.5%) 1,051,264 25415.0% (14) 1.055.401 4.136 14 (100.0%) Other income 1,376,214 976,574 399,640 40.9% Total other revenue/(expenses) 4,227,607 3,727,127 500,481 13.4% (2,378,587) (288,658)(2,089,927)6,195,168 9,722,843 (3,527,676) (36.3%)724.0% Excess of revenues over expenses \$9,722,843 (\$2,378,587) (\$288,658) (\$2,089,927) 724.0% Increase in net assets \$6,195,168 (\$3,527,676) (36.3%)

Message Today 10:40 AM



Phil Emmerson
Congratulations to both
Candidates this will be one more
step to transparency and
accountability for our Citizen's
tax dollars and our public
Hospital more desirable to our
citizens and doctors, nurses,
and all medical staff

is Antiques and



Citizens for Hospital Account...
Stay tuned, the recall of Kumar is ready to begin. We will need all hands on deck to collect 1200 signatures. Instruction will be forthcoming very soon. It's time to finish what we started!





Myrna Mante
Just 1200? It will be done in

YORAI (BENNY) BENZEEVI, M.D. 3500 West Olive Avenue Suite 300 Burbank, CA 91505 Telephone: (818) 279-2744

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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re: TULARE LOCAL HEALTHCARE DISTRICT dba TULARE REGIONAL MEDICAL CENTER,

Debtor.

Case No. 17-13797-9-B Chapter 9

DC No.: WW-9

DECLARATION OF YORAI (BENNY) BENZEEVI, M.D. IN RESPONSE TO THE MOTION FOR AUTHORIZATION TO REJECT EXECUTORY CONTRACT (MEDFLOW, PC)

Date: January 11, 2018

Time: 9:30 a.m. Place: 2500 Tula

nce: 2500 Tulare Street Fresno, CA 93721

Judge: Hon. René Lastreto II

I, Yorai (Benny) Benzeevi, M.D., declare:

1. I am the Managing Member of Healthcare Conglomerate Associates, LLC ("HCCA"). HCCA is a California Limited Liability Company with its principal place of business in Los Angeles and was, until November 22, 2017, the Manager of debtor Tulare Local Healthcare District dba Tulare Regional Medical Center ("District" or "TRMC"). Prior to HCCA serving as Manager to the District in January 2014, I served as Director of the Emergency Department at TRMC from 2007 until December 2013. I received my medical degree at the University of California, Davis and I am board certified by the American Board of Emergency Medicine and I hold the status of Fellow of the American College of Emergency Medicine.

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Based on the foregoing positions, I have extensive knowledge of the District and its governance and operations, HCCA's contracts and the performance thereunder, and the relationship between the District and HCCA.

- 2. I also am the President of Medflow PC ("Medflow"). I make this declaration in response to the District's Motion to Reject Executory Contract (Medflow, PC) ("Motion" to reject the District's "Agreement" with Medflow). Medflow does not oppose the Motion; rather I submit this declaration in response to a number of incorrect statements contained in the Declaration of Sanford Haskins (Chief Administrative Officer) in support of the Motion ("Haskins Declaration").
- 3. Paragraph 9 of the Haskins Declaration incorrectly describes the services rendered by Medflow for the District. In addition to providing the District with experienced administrative/medical directors, Medflow provided, among other things, the following services:
 - Assistance to TRMC in operational administrative oversight of the Emergency Department;
 - Assistance in recruiting physicians;
 - Recommendations as to qualified non-physician personnel;
 - Recommendations as to additions to and/or revisions of policies and procedures pertaining to the Emergency Department;
 - Assistance to TRMC in the development and implementation of patient care protocols and a medical staff development plan;
 - Assistance in accreditation surveys of the Emergency Department;
 - Assistance in management of services furnished through contractual arrangements;
 - Assistance in providing educational and risk management programs;
 - Assistance in increasing productivity;
 - Assistance in establishing best practices;
 - Assistance in conducting quality assurance;

- Utilization review; and
- Assistance in special projects.
- At no time after HCCA began providing services under the now-rejected Management Services Agreement in January 2014, did I serve as Medical Director of the Emergency Department or in any capacity in the Emergency Department.
- 5. At no time after HCCA began providing services under the now-rejected Management Scrvices Agreement in January 2014, have I collected any Medical Director fees from the District.
- 6. Medflow does not oppose rejection of the relevant agreement because it recognizes that the Bankruptcy Code authorizes rejection of an executory contract in the exercise of a debtor's business judgment even if such judgement may result in harm to the debtor. The notion in paragraphs 12 and 13 that the District will save money by rejection the Medflow agreement is incongruent with current emergency department contracts and practices. Based on my experience described in paragraph 1 of this declaration, I strongly believe that current emergency department contracts will cost the District on average 200% or more than would the Medflow agreement. Nor will the District save money because it will still have to employ a medical director for the Emergency Department. A review of the Medflow agreement and the two prior emergency department contracts will show definitively that Medflow provided the District with substantial savings that the District will be unable to replicate if and when the hospital re-opens.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 28th day of December, 2017 in Visalia, California.

Yorai (Benny) Benzcevi, M.D.

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HAGOP T. BEDOYAN, CSB NO. 131285
     KURT D. VAN SCIVER, CSB NO. 263957
KLEIN, DENATALE, GOLDNER,
COOPER, ROSENLIEB & KIMBALL LLP
 1
 2
      5260 N. Palm Avenue, Suite 205
      Fresno, California 93704
 3
      Telephone: (559) 438-4374
      Facsimile: (661) 326-0418
 4
      E-mail: hbedoyan@kleinlaw.com
            kvansciver@kleinlaw.com
 5
      Attorneys for HealthCare Conglomerate Associates, LLC
 6
 7
                          UNITED STATES BANKRUPTCY COURT
                 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION
 8
 9
     In re:
                                              Case No.: 17-13797-9-B
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     TULARE LOCAL HEALTHCARE
                                              Chapter 9
11
     DISTRICT dba TULARE REGIONAL
     MEDICAL CENTER,
                                              Adversary Pro. No.: 18-01005-B
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                          Debtor.
                                              DC No. WW-1
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14
                                              DECLARATION OF ALAN GERMANY IN
     TULARE LOCAL HEALTHCARE
                                              SUPPORT OF HEALTHCARE
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     DISTRICT dba TULARE REGIONAL
                                              CONGLOMERATE ASSOCIATES, LLC'S
     MEDICAL CENTER.
                                              OPPOSITION TO MOTION FOR
16
                                              PARTIAL SUMMARY JUDGMENT ON
                         Plaintiff.
                                              SIXTH CLAIM FOR DECLARATORY
17
                                              RELIEF
     ٧.
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                                              Date:
                                                        August 15, 2018
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     HEALTHCARE CONGLOMERATE
                                              Time:
                                                        1:30 p.m.
     ASSOCIATES, LLC a California limited
                                              Place:
                                                        2500 Tulare Street
20
     liability company.
                                                       Courtroom 13
                        Defendant.
                                                       Fresno, CA 93721
21
                                                       Honorable René Lastreto II
                                              Judge:
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            I, ALAN GERMANY, declare as follows:
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            1.
                  I am an adult over the age of 18.
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            2.
                  I make this declaration based on my own personal knowledge. If called upon to
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     do so, I could and would testify competently to the matters stated in this declaration.
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            3.
                  I make this declaration in support of Healthcare Conglomerate Associates,
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     LLC's ("HCCA") opposition to the motion for summary judgment.
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    30Q6126
                                                                   DECLARATION OF A. GERMANY
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- 4. I was a consultant for HCCA and Tulare Local Healthcare District dba Tulare Regional Medical Center ("District" or "TRMC"). I was never an employee of HCCA or the District. I was never the CFO or COO of HCCA.
- 5. Instead, I contracted directly with the District in August 2014 and, as an independent contractor, served as Interim Chief Financial Officer for TRMC.
- 6. In February 2015, I contracted with HCCA to serve as CFO and COO of TRMC (not HCCA). In January 2016, my contract with HCCA was extended through January 2019.
- 7. I did not perceive that the election of two board members to the District would be adverse to my economic interest, as stated in the motion for summary judgment, because I had a consulting agreement with HCCA.
- 8. I did not perceive that the recall of Dr. Kumar would result in more transparency as stated in the motion for summary judgment. During my time as Interim CFO and then CFO and COO of TRMC, I provided substantial detail in board meetings regarding the financial condition of TRMC.
- 9. When pursuing financing for the District, I acted according to the directions of the District's board, which had directed HCCA to pursue financing. On the advice of counsel, I understood that the new board members of the District had not been seated and their actions were of no effect. On that basis, I understood that the District's board had not rescinded that direction in a lawfully convened meeting with a quorum of seated board members.
- 10. When I provided Celtic Leasing Corporation with the address of 869 Cherry Street, Tulare, CA 93274 as the address of Tulare Asset Management, I knew that this was the correct address for that entity. On that basis, I provided that address to Celtic Leasing Corporation.

I make this declaration under penalty of perjury under the laws of the state of California.

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Executed on July 24, 2018

<u>/s/ Alan Germany</u> ALAN GERMANY

DECLARATION OF A GURMANY

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- 4. I was a consultant for HCCA and Tulare Local Healthcare District dba Tulare Regional Medical Center ("District" or "TRMC"). I was never an employee of HCCA or the District. I was never the CFO or COO of HCCA.
- 5. Instead, I contracted directly with the District in August 2014 and, as an independent contractor, served as Interim Chief Financial Officer for TRMC.
- 6. In February 2015, I contracted with HCCA to serve as CFO and COO of TRMC (not HCCA). In January 2016, my contract with HCCA was extended through January 2019.
- 7. I did not perceive that the recall of Dr. Kumar from the TRMC Board would result in more transparency as stated in the motion for summary judgment. During my time as Interim CFO and then CFO and COO of TRMC, I provided substantial detail in board meetings regarding the financial condition of TRMC.
- 8. When pursuing financing for the District, I acted according to the directions of the District's board, which had directed HCCA to pursue financing. On the advice of counsel, I understood that the new board member of the District had not been seated and her actions were of no effect. On that basis, I understood that the District's board had not rescinded that direction in a lawfully convened meeting with a quorum of seated board members.
- When I provided Celtic Leasing Corporation with the address of 869 Cherry Street, Tulare, CA 93274 as the address of Tulare Asset Management, I believed that was the correct address for Tulare Asset Management. On that basis, I provided that address to Celtic Leasing Corporation.

Umakethis declaration under penalty of perjury under the laws of the state of California.

ALANDEBRIXANDE

HAGOP T. BEDOYAN, CSB NO. 131285 KURT D. VAN SCIVER, CSB NO. 263957 1 KLEIN, DENATALE, GOLDNER, COOPER, ROSENLIEB & KIMBALL LLP 2 5260 N. Palm Avenue, Suite 205 Fresno, California 93704 3 Telephone: (559) 438-4374 Facsimile: (661) 326-0418 4 E-mail: hbedoyan@kleinlaw.com kvansciver@kleinlaw.com 5 6 Attorneys for HealthCare Conglomerate Associates, LLC 7 UNITED STATES BANKRUPTCY COURT 8 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION 9 Case No.: 17-13797-9-B In re: 10 11 **TULARE LOCAL HEALTHCARE** Chapter 9 DISTRICT dba TULARE REGIONAL 12 MEDICAL CENTER. Adversary Pro. No.: 18-01005-B 13 Debtor. DC No. WW-1 14 **DECLARATION OF YORAI (BENNY)** TULARE LOCAL HEALTHCARE 15 BENZEEVI, M.D., IN SUPPORT OF DISTRICT dba TULARE REGIONAL **HEALTHCARE CONGLOMERATE** 16 MEDICAL CENTER. ASSOCIATES, LLC'S OPPOSITION TO **MOTION FOR PARTIAL SUMMARY** 17 Plaintiff, JUDGMENT ON SIXTH CLAIM FOR **DECLARATORY RELIEF** 18 ٧. 19 Date: August 15, 2018 HEALTHCARE CONGLOMERATE Time: 1:30 p.m. ASSOCIATES, LLC a California limited 20 Place: 2500 Tulare Street liability company, Courtroom 13 21 Defendant. Fresno, CA 93721 22 Judge: Honorable René Lastreto II 23 24 25 26 27

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I, YORAI (BENNY) BENZEEVI, M.D., declare as follows:

1. I am an adult over the age of 18.

2. I make this declaration based on my own personal knowledge. If called upon to do so, I could and would testify competently to the matters stated in this declaration.

3. I make this declaration in support of Healthcare Conglomerate Associates, LLC's ("HCCA") opposition to the motion for summary judgment.

2 Levels this desired competently to

4. I am the Managing Member of HCCA. HCCA is a California Limited Liability Company with its principal place of business in Los Angeles and was the Manager of debtor Tulare Local Healthcare District dba Tulare Regional Medical Center ("District" or "TRMC"). I have overall responsibility for the management of HCCA. Prior to HCCA serving as manager of the District, I served as Director of the Emergency Department at TRMC from 2007 until January 2014. I received my medical degree at the University of California, Davis and I am board certified by the American Board of Emergency Medicine and I hold the status of Fellow of the American College of Emergency Medicine. Based on the foregoing positions, I have extensive knowledge of the District and its governance and operations, HCCA's contracts and the performance thereunder, and the relationship between the District and HCCA.

- 5. From 2007 to 2014, the District employed six different Chief Executive Officers and over six different Chief Financial Officers. The District lost over \$16 million in the three fiscal years prior to 2014 and over \$8 million in the fiscal year prior to 2014 alone.
- 6. The District needed new and effective leadership. In December 2013, after a year-long search, the District entered into a short-term management services agreement with HCCA, effective January 2014. The District then entered into a long-term Management Services Agreement (the "MSA") with HCCA to be the exclusive manager and operator of the District,

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which included specifically the appointment by HCCA of a Chief Executive Officer. Under the MSA, approved by a 5-0 vote of the District's board, HCCA as manager would appoint an individual to serve as the denominated CEO.

- 7. The MSA established a term of 15 years plus a renewal term of an additional 10 years. Under the terms of the MSA, HCCA had the authority to manage the District on a day-to-day basis. I acted as CEO since 2015. During that time, the District's board never formally or informally questioned my authority to act as CEO of the District nor did the District's board at any time since entering into the MSA with HCCA ever formally or informally question HCCA's authority to appoint a CEO. A true and correct copy of the MSA is attached as Exhibit A.
- 8. HCCA's authority included the power to loan money to the District to cover necessary expenses if the District failed to provide sufficient funds to HCCA for operations. The MSA granted HCCA a security interest in all the District's assets to secure those funds. In particular, the MSA authorized HCCA to act as attorney-in-fact for the District and gave HCCA the power to execute any financial instrument necessary to secure its loans to the District, if such loans proved necessary.
- 9. From 2014 to 2017 HCCA loaned the District \$10,233,950.05 (the "Loans") to cover expenses.
- 10. On September 28, 2017, the District recorded a deed of trust in favor of HCCA to secure the Loans. I signed the deed of trust on behalf of the District.
- 11. The District's board membership changed several times during HCCA's tenure.

 At no time was the MSA or any of its components formally or informally challenged by the board.
- 12. After the most recent change in membership on the District's board, the District abruptly and without notice declared bankruptcy.

I make this declaration under penalty of perjury under the laws of the state of California.

I execute this declaration on July 24, 2018 in Los Angeles, California.

YORAI (BENNY) BENZEEVI. MD

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DECLARATION OF Y. BENZEEVI



DECLARATION OF ALAN GERMANY

Filed 07/08/16

609108797.1

I, Alan Germany, hereby declare:

- I am the duly appointed Chief Restructuring Officer of the Southern Inyo Healthcare District ("SIHD"). I submit the within declaration in support of the opposition (the "Opposition") to the Motion for Relief from Stay and/or Alternative Relief (the "Motion") [Docket Entry ("D.E.") 169] filed by EverBank Commercial Finance, Inc. ("Lender"). Unless otherwise noted, all capitalized terms used herein shall have the same meaning as ascribed to such term in the Opposition.
- 2. Except as otherwise stated, I have personal knowledge of the matters set forth herein and, if called as a witness, could competently testify to the same.
- 3. Following the Petition Date, I immediately began working with SIHD to establish a foundation for the plan of readjustment. The immediate and primary concern was the preservation of the hospital assets and licenses. To that end, I evaluated the Debtor's records, and I immediately began implementing measures to reduce costs and increase revenues.
- 4. The Debtor has made substantial strides toward establishing a firm foundation for a plan of readjustment in the Bankruptcy Case. Now that the hospital has reopened and is accepting patients, the Debtor anticipates being able to propose a plan of readjustment that will allow the Debtor to repay its obligations and continue to provide much needed medical services to the community of southern Inyo County for years to come.
- 5. It is my understanding that prior to the Petition Date, SIHD had entered into an agreement with General Electric Capital Corporation ("GE"), pursuant to which SIHD financed the acquisition of certain medical equipment—namely, a GE Optima CT660 and VITROS 350 Chemistry System (the "Equipment").
- 6. The Equipment is essential to patient care and operation of SIHD, as SIHD regularly uses it to diagnose patients. Among other things, the Equipment produces multiple images or pictures of the inside of the body and joins them together in cross-sectional views of the area being studied. The Equipment also prepares scans of internal organs, bone, soft tissue and blood vessels that are crucial for diagnosis and treatment of patients.

BAKER & HOSTETLER LLP ATTORNEYS AT LAW LOS ANGELES 7. The return and replacement of the Equipment would result in a significant burden to SIHD. Therefore, should the hospital lose the Equipment, patient care, and ultimately SIHD's ability to successfully readjust its debt will be significantly impacted.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of July, 2016, at Lone Pine, California.

Alan Germany

/s/Alan Germar

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DECLARATION OF ALAN GERMANY

DECLARATION

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6 ı 2 HAGOP T. BEDOYAN, CSB NO. 131285 KLEIN, DENATALE, GOLDNER, 3 COOPER, ROSENLIEB & KIMBALL, LLP 5260 N. Palm Avenue, Suite 205 4 Fresno, California 93704 Telephone: (559) 438-4374 5 Facsimile: (661) 326-0418 6 Email: hbedoyan@kleinlaw.com; 7 Brandon N. Krueger, Esq. (SBN 221432)(Admission Pending) bkrueger@sallspencer.com 8 Lara A.S. Callas, Esq. (SBN 174260)(Admission Pending) lcallas@sallspencer.com 9 SALL SPENCER CALLAS & KRUEGER 10 A Law Corporation 32351 Coast Highway 11 Laguna Beach, CA 92651 Telephone: (949) 499-2942 12 Facsimile: (949) 499-7403 13 Attorneys for Healthcare Conglomerate Associates, LLC and 14 Vi Healthcare Finance, Inc. 15 UNITED STATES BANKRUPTCY COURT 16 17 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION 18 In re: Case No.: 16-10015-A-9 19 SOUTHERN INYO HEALTHCARE Chapter DISTRICT. 20 DC No.: KDG-4 21 Debtor. Date: November 14, 2018 22 Time: 1:30 p.m. Place: **United States Bankruptcy Court** 23 2500 Tulare Street, Fifth Floor Department A, Courtroom 11 24 Fresno, California Honorable Fredrick E. Clement Judge: 25 26 27 DECLARATION OF YORAI BENZEEVI, M.D. IN SUPPORT OF MOTION TO DISQUALIFY ASHLEY M. MCDOW AND FOLEY & LARDNER AS ATTORNEYS 28 **FOR DEBTOR**

3NO8358

I, YORAI (BENNY) BENZEEVI, M.D., declare as follows:

- 1. I am an adult over the age of 18.
- I make this declaration based on my own personal knowledge. If called upon to do so, I could and would testify competently to the matters stated in this declaration.
- 3. I make this declaration in support of the Motion of Healthcare Conglomerate Associates, LLC ("HCCA") and Vi Healthcare Finance, Inc. ("Vi") to disqualify the law firm of Foley & Lardner and Ashley McDow from representation of Debtor in the above entitled Chapter 9 case.
- 4. I am the Managing Member of HCCA. HCCA is a California Limited Liability Company with its principal place of business in Los Angeles and was the Manager of debtor Southern Inyo Healthcare District ("Inyo" or "Debtor"). I have overall responsibility for the management of HCCA. I am also the President of Vi, a finance company which extended a line of credit to Debtor in July 2017. I received my medical degree at the University of California, Davis and I am board certified by the American Board of Emergency Medicine and I hold the status of Fellow of the American College of Emergency Medicine. Based on the foregoing positions, I have extensive knowledge of HCCA's contracts and the performance thereunder, the relationship between HCCA, and its affiliate entities, and the law firm of Baker Hostetler, the relationship between Inyo and HCCA, and the relationship between Inyo and Vi.
- 5. In 2009, I retained the firm of Baker Hostetler ("Baker") to advise and assist me in the formation of a professional corporation. Between 2009 and 2017, Baker's engagement expanded far beyond the initial engagement to the formation of, and legal services to several other health-care related entities, including HCCA, Medflow, PC, Vi, and Tulare Asset Management (collectively, the "Benzeevi Group"). In 2013 and 2014, Baker advised HCCA concerning the drafting and negotiation of a Management Services Agreement ("Tulare MSA") with Tulare Local Healthcare District ("TLHD") and then continued to advise HCCA concerning the management of TLHD while it also undertook to advise TLHD. In 2013, Baker assisted and advised me in forming Medflow, PC. Baker also provided legal services relating

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to trademark and personnel issues, including drafting numerous employment and independent contractor agreements for physicians and other professionals affiliated with my businesses. Baker essentially functioned as outside general counsel for all of the businesses I was forming and operating between 2009 and 2017, and I communicated with them frequently, and at certain times, multiple times per day. Bruce Greene was my primary contact at Baker, but Ashley McDow and Fahim Farivar also worked on HCCA matters. I communicated significant amounts of confidential information to Baker concerning all aspects of the business of the Benzeevi Group, including financial information and business strategies and goals. Throughout Baker's representation, the Benzeevi Group paid Baker at least hundreds of thousands of dollars for its legal services.

- drafting a Management Services Agreement with Inyo (the "Inyo MSA"). A true and correct copy of the Inyo MSA is attached hereto as Exhibit A. Ashley McDow, a partner at Baker, was heavily involved, along with Mr. Greene, in these negotiations and drafting, with particular emphasis on advising HCCA concerning how the contemplated Chapter 9 proceedings, to be initiated by Inyo, would affect HCCA's rights under the Inyo MSA. I spoke multiple times per day during this period with both Mr. Greene and Ms. McDow concerning the Inyo MSA and shared substantial confidential information with them concerning HCCA's strategies and goals with respect to the Inyo MSA. Ms. McDow was the attorney representing HCCA who appeared on behalf of HCCA at the January 2, 2016 meeting of the Inyo Board where the Inyo MSA, the January 2, 2016 purported "Waiver of Conflict" and the retainer agreement between Baker and Inyo letter (Exhibits B and C, discussed in paragraph 7) were all approved. The Inyo Board was represented by separate counsel Scott Nave in negotiating the Inyo MSA.
- 7. Following execution of the Inyo MSA by Inyo and myself, on behalf of HCCA, Baker began representing Inyo in commencing this Chapter 9 proceeding. In connection with this dual representation, Baker presented to HCCA and Inyo a purported "Waiver of Conflict" letter dated January 2, 2016. A true and correct copy of this January 2, 2016 letter signed by Bruce Greene, but not Inyo or HCCA, is attached hereto as **Exhibit B**. I have been unable to

locate a copy of the January 2, 2016 "Waiver of Conflict" letter counter-signed by Inyo and HCCA in the files in my possession. Baker also provided to Inyo an "Engagement of Counsel" letter to Inyo also dated January 2, 2016. A true and correct copy of the January 2, 2016 "Engagement of Counsel Letter" is attached hereto as Exhibit C. As part of the Board approval process for the Inyo MSA, the "Waiver of Conflict Letter" and the "Engagement of Counsel" Letter were posted at the Inyo facilities, as well as uploaded along with the Agenda for the January 2, 2016 Board meeting where the Inyo Board considered approval of the MSA, the retention of Baker by Inyo, and the purported "Waiver of Conflict." The Inyo MSA was executed by Inyo and HCCA sometime in early January 2016.

8. The Inyo MSA required that HCCA provide a Chief Restructuring Officer to manage the hospital. HCCA appointed HCCA representative Alan Germany to serve as Chief Restructuring Officer. Between January 2016 and September 2017, Ms. McDow communicated with Mr. Germany and myself concerning Chapter 9 issues for Inyo. I

manage the hospital. HCCA appointed HCCA representative Alan Germany to serve as Chief Restructuring Officer. Between January 2016 and September 2017, Ms. McDow communicated with Mr. Germany and myself concerning Chapter 9 issues for Inyo. I understood that after Baker began representing Inyo in the Chapter 9 proceedings, Baker would continue to advise HCCA concerning the Chapter 9 proceedings and with regard to the Inyo MSA, and in fact Baker did exactly that. Baker and Ms. McDow continued to advise HCCA with regard to its duties and responsibilities as the manager of Inyo and in relation to the Chapter 9 proceedings, Baker also continued to perform legal services on other matters it continued to handle for HCCA and the Benzeevi Group. At no time was I told that if the interests of HCCA and Inyo became in conflict, that Baker could continue to represent Inyo adverse to any member of the Benzeevi Group. To the contrary, it was my understanding that if an actual conflict developed, Baker would terminate its representation of Inyo and continue representing the Benzeevi Group, including as to the Inyo MSA.

9. In the summer of 2017, Baker undertook another project related to Inyo, the formation of Vi Healthcare Finance, Inc. ("Vi"). Baker drafted the formation documents for Vi and the transaction documents whereby Vi extended a line of credit to Inyo, and Baker advised me concerning this entity. I am the President of Vi. In connection with Vi, Baker provided another purported "Waiver of Conflict" Letter dated July 19, 2017. A true and correct

copy of this letter, signed by Bruce Greene of Baker, as well as myself on behalf of HCCA and Vi, and Inyo Board member Richard Fedchenko, for Inyo, is attached hereto as Exhibit D.

- 10. In the summer of 2017, a dispute erupted between HCCA and the Inyo Board concerning the financial situation of Inyo and HCCA's management of Inyo.
- 11. On September 29, 2017, I received a letter from Mr. Greene at Baker stating that Baker was commencing termination of its representation of all entities of the Benzeevi Group. A true and correct copy of Baker's September 29, 2017 letter is attached hereto as **Exhibit E**. Neither orally, nor in this September 29, 2017 letter, did Baker disclose to me that an actual conflict had developed. Baker also did not seek a waiver of an actual conflict between any entity of the Benzeevi Group and Inyo. Baker did not seek my consent to continue representing Inyo and had it requested such consent I would have declined to grant such consent. Baker's conduct was directly contrary to my expectation and understanding that Baker would continue to represent the Benzeevi Group if a conflict developed with Inyo.
- 12. Then, approximately two and a half weeks later, on October 17, 2017, Ms. McDow filed on behalf of Inyo in the Chapter 9 proceedings an Emergency Motion seeking rejection of the Inyo MSA which was highly prejudicial to the Benzeevi Group. I received no advance notice that Baker intended to file this motion, that Ms. McDow would support the motion with her own declaration, or that Ms. McDow would appear at the hearing on this Emergency Motion and make statements adverse to the interest of the Benzeevi Group. Instead, I received an e-mail the same day the motion was filed that a hearing would occur on the Emergency Motion that same day.
- 13. Prior to the problem arising with Inyo, a dispute had arisen between TLHD and HCCA. This dispute arose after a new Board was elected for TLHD in November 2016. Baker had represented HCCA with regard to the Tulare MSA both before and after execution of the Tulare MSA and also represented TLHD. However, in the summer of 2017 the TLHD claimed to have retained new counsel, the McCormick Barstow firm, to replace Baker. Mr. Greene of Baker disputed the TLHD Board's authority to hire new counsel. One example of this position is reflected in an e-mail from Mr. Greene to several members of the TLHD Board dated August

8, 2017 wherein he stated "any law firm that the three of you may have selected will not be considered to lawfully represent the District." A true and correct copy of Mr. Greene's August 8, 2017 e-mail is attached hereto as Exhibit F.

14. When Ms. McDow left Baker and joined the firm of Foley & Lardner, she did not seek my consent to have Foley & Lardner or herself, represent Inyo in these proceedings. Had my consent been sought, I would not have granted consent for Foley or Ms. McDow to represent Inyo.

I declare under penalty of perjury that the foregoing statements are true and correct and that if called as a witness herein I could and would competently testify thereto, and that this declaration was executed on October 14, 2018 at Los Angeles California.

YORAI BENZEEVI, M.D.

Doc 488

EXHIBIT 10

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HAGOP T. BEDOYAN, CSB No. 131285

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SOUTHERN INYO

HEALTHCARE DISTRICT,

Attorneys for HealthCare Conglomerate Associates, LLC. And Vi Healthcare Finance, Inc.

Debtor.

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

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Case No. 16-10015-A-9

Chapter 9

DC NO.: KDG-4

Date:

November 14, 2018

Time:

1:30 p.m.

Place United

United States Bankruptcy Court 2500 Tulare Street, Fifth Floor Department A, Courtroom 11

Fresno, California

Judge:

Honorable Fredrick E. Clement

EXHIBITS IN SUPPORT OF MOTION TO DISQUALIFY ASHLEY M. MCDOW AND FOLEY & LARDNER AS ATTORNEYS FOR THE DEBTOR

EXHIBIT	DESCRIPTION	PAGE(S)
"A"	Management Services Agreement between HCCA and Southern Inyo Healthcare District	5 - 53
"B"	BakerHostetler Letter dated January 2, 2016 Re: Waiver of Confict	54 - 57
"C"	BakerHostetler Letter dated January 2, 2016 Re: Engagement of Counsel	58 - 64

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1	"D"	BakerHostetler Letter dated July 19, 2017 Re: Waiver of Conflict	65 - 69
2	"E"	BakerHostetler Letter dated September 29, 2017 Re: Termination of Representation	70 - 72
3 4	"F"	E-mail from Bruce Greene dated August 8, 2017 Re: TRMC Purported Board Meeting	73 - 74
5	"G"	Reporter's Transcript of Recorded Proceedings of Hearing on October 17, 2017	745- 104
6	"H"	Transcript of Proceedings before the Honorable Fredrick E. Clement on August 29, 2018	105 - 130
7	"I"	Klein DeNatale Goldner letter dated September 17, 2018 Re: Benzeevi/HCCA et al.	131 - 136
8	"J"	Resume of Robert L. Kehr	137 - 145
9	"K"	List of Materials utilized by Robert L. Kehr	146
10 11 12	"L"	Complaint for: (1) Avoidance of Unauthorized Post-Petition Transfers; (2) Breach of Contract; (3) Accounting; (4) Negligence; (5) Concealment; (6) Breach of Fiduciary Duty; (7) Declaratory Relief; (8) Equitable Subordination; (9) Violation of Government Code § 8314, filed on May 30, 2018 (Doc # 1)	147 - 218
13 14 15	"M"	Request for Judicial Notice in Support of Motion for Authorization to Reject Executory Contract of Healthcare Conglomerate Associates, LLC, filed on October 18, 2017 in the United States Bankruptcy Court Eastern District of California, Fresno Division Case of Tulare Local Healthcare District, dba Tulare Regional Medical Center, bearing Case Number 17-13797 ("Tulare Action") (Doc. #103)	219 - 220
16	"N"	Application for Ex Parte Order Authorizing FRBP 2004 Examination and Production of Documents (Bakerhostetler filed on December 5, 2017 in the Tulare Action (Doc. #256)	221 - 223
17 18	"O"	Order Granting Application for Order Authorizing FRBP 2004 Examination and Production of Documents (Bakerhostetler), filed on December 5, 2017 in the Tulare Action (Doc. #256)	224 - 225
19	"P"	Proof of Claim, filed on April 10, 2018 in the Tulare Action (Claim #238)	226 - 229
20	"Q"	Voluntary Petition for Non-Individuals Filing for Bankruptcy by Southern Inyo Healthcare District, filed on January 4, 2016 in the above-referenced case (Doc. #1)	230 - 233
21222324	"R"	Emergency Motion (1) for Authority to Immediately Terminate HCCA Management Agreement or, in the Alternative, for Authority to Modify the Terms of the HCCA Management Agreement in Order to Designate the Board as the Sole Signatory on all District Bank Accounts and (2) to Continue Hearing on Second Amended Disclosure Statement and Associated Filing Deadlines, filed on October 17, 2017 in the above-referenced case (Doc. #325)	234 - 247
25 26 27 28	"S"	Declaration of Ashley M. McDow in Support of the Emergency Motion (1) for Authority to Immediately Terminate HCCA Management Agreement or, in the Alternative, for Authority to Modify the Terms of the HCCA Management Agreement in Order to Designate the Board as the Sole Signatory on All District Bank Accounts and (2) to Continue Hearing on Second Amended Disclosure Statement and Associated Filing Deadlines, filed on October 17, 2017 in the above-referenced case (Doc. #326) Order Granting Application for Order Setting Hearing on Shortened	248 - 273
	<u> </u>	Notice Re Emergency Motion (1) For Authority to Immediately	274 - 276
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		Terminate HCCA Management Agreement or, in the Alternative, for Authority to Modify the Terms of the HCCA Management Agreement in Order to Designate the Board as the Sole Signatory on All District Bank Accounts and (2) to Continue Hearing on Second Amended Disclosure Statement and Associated Filing Deadlines, filed on October 17, 2017 in the above-referenced case (Doc. #328)	
	"U"	Declaration Re Provision of Notice of Hearing on Emergency Motion, filed on October 17, 2017 in the above-referenced case (Doc. #329)	277 - 278
5	V.,	Declaration of Ashley M. McDow in Support of the Emergency Motion to Continue Hearing on the Status Conference and the Associated Filing Deadlines, filed on October 26, 2017 in the above-referenced case (Doc. #339)	279 - 282
7	"W"	Administrative Expense Claim, filed on November 6, 2017 in the above-referenced case (Doc. #355)	283 - 285
3 <u> </u>	"X"	Proof of Claim, filed on November 6, 2017 in the above-referenced case (Claim #48-1)	286 - 288
	"Y"	Notice of Settlement Re: Emergency Motion (1) for Authority to Immediately Terminate HCCA Management Agreement or, in the Alternative, for Authority to Modify the Terms of the HCCA Management Agreement in Order to Designate the Board as the Sole Signatory on All District Bank Accounts; and (2) to Continue Hearing on Second Amended Disclosure Statement and Associated Filing Deadlines [Docket No. 325], filed on November 22, 2017 in the above-referenced case (Doc. #377)	289 - 300
	"Z"	Order Approving Stipulation Re Rejection of HCCA Management Agreement, filed on December 2, 2017 in the above-referenced case (Doc. #382)	301 - 303
	"AA"	Application for Ex Parte Order Authorizing FRBP 2004 Examination and Production of Documents (Southern Inyo Healthcare District), filed on December 8, 2017 in the above-referenced case (Doc. #388)	304 - 306
	"BB"	Order Granting Application for Order Authorizing FRBP 2004 Examination and Production of Documents (Southern Inyo Healthcare District), filed on December 12, 2017 in the above-referenced case (Doc. #392)	307 - 308
	"CC"	Second Amended Disclosure Statement with Respect to the Plan for the Adjustment of Debts of Southern Inyo Healthcare District, filed on January 17, 2018 in the above-referenced case (Doc. #397)	309 - 375
	"DD"	Request for Payme305nt of Administrative Expense Claim of Healthcare Conglomerate Associates, LLC Arising Out of Rejection of Executory Contract (11 U.S.C. §§ 503(b) and 507(a)(2)), filed on January 30, 2018 in the above-referenced case (Doc. #406)	376 - 378
	"EE'	Ex Parte Motion to Remove from the Record and Replace the Chapter 9 Status Report Filed with the Court on May 17, 2018 Due to Inadvertent Disclosure of Highly Sensitive Information; Declaration of Ashley M. McDow in Support, filed on May 17, 2018 in the above-referenced case (Doc. #436)	379 - 402
	"FF"	Request for Payment of Administrative Expense Claim of Vi Healthcare Finance, Inc. (11 U.S.C. §§ 503(b) and 507(a)(2)), filed on June 8, 2018 in the above-referenced case (Doc. #447)	403 - 404
	"GG"	Substitution of Attorney for Baker & Hostetler LLP, filed on June 14, 2018 in the above-referenced case (Doc. #450)	405
	"HH"	Order Approving Substitution of Attorney, filed on June 26, 2018 in the above-referenced case (Doc. #452)	406

KLEIN, DENATALE, GOLDNER, COOPER, Dated: October 12, 2018 I ROSENLIEB & KIMBALL LLP By: /s/ Hagop T. Bedoyan
HAGOP T. BEDOYAN, Attorneys for HealthCare Conglomerate Associates, LLC and Vi Healthcare Finance, Inc. 3DP2292 (KDG-4) EXHIBITS - MOTION TO DISQUALIFY

Management Services Agreement between

HealthCare Conglomerate Associates, LLC and

Southern Inyo Healthcare District

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EXHIBITA 5

Case 16-10015

MANAGEMENT SERVICES AGREEMENT

This Management Services Agreement ("<u>Agreement</u>") is made and entered into affective as of January 2, 2016 ("<u>Effective Date</u>"), by and between HealthCure Conglomerate Associates, LLC, a California limited liability company ("<u>Manager</u>"), and Southern triyo Healthcare District (the "District").

RECITALS:

WHEREAS, the District owns and operates an acute care hospital, a clinic, and a skilled nursing facility at 501 East Locust Street in Long Pine, California (the "Hespital") together with the Other Facilities.

WHEREAS, the parties have determined that Manager's provision of services in accordance with the terms of this Agreement will further the ability of the District (1) to provide for efficient delivery of health care services; (2) serve the best interests of the communities served by the District; and (3) enhance the ability of the parties to effectively and efficiently provide health care for the communities served by the District,

WHEREAS, the parties intend that this arrangement will allow them to achieve a number of mutually beneficial objectives, including the following: (1) further the development of a community-based integrated health care system; (2) enhance the quality of health care services available to residents of the community residents by allowing evaluation of existing services and addition of new services, as deemed appropriate by Manager; (4) achieve efficiencies through coordination, consolidation, or reorganization, as appropriate, of certain identified health care services; and (5) improve the capacity of the parties and their affiliates to recruit and retain physicians necessary to serve the health care needs of the community, develop linkages with other providors and payers, and expand the geographical service area of the District;

WHEREAS, Manager has herelatore expended considerable effort and resources, including, but not limited to, financial resources to review and analyze information regarding the Hospital provided by the District; and

WHEREAS, the District desires to engage Manager, and Manager desires to be engaged, to manage the Operations of the District upon the terms set forth in this Agreement.

NOW. THEREFORE, for and in consideration of the premises and the mutual undertakings and representations herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby scknowledged, the parties hereto, intending to become legally bound, hereby agree as follows:

AGREEMENT

1. <u>Definitions</u>

All capitalized terms not defined elsewhere in this Agreement shall have the following meanings, unless a different meaning clearly appears from the context:

(a) "Affiliate" means any other firm, partnership, association, corporation, joint venture or public body, directly or indirectly controlling or controlled by, or under direct or indirect common control with, the District or Manager. The term "control," when used with respect to a

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particular Person, means the possession, directly or indirectly, of the power to direct or cause the direction of management in the policies of such Person whether through the ownership of volling stock, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

- (b) "Annual Budget" shall have the meaning set forth in Section 4(f)(l).
- (d) "<u>Buildings</u>" means those buildings and other structures in which the Operations, now or hereafter are conducted, together with such other buildings and structures now or hereafter owned, leased or otherwise operated by the District that Manager diects, in its sole and absolute discretion, to operate hereunder, by notice to the District from time to time.
- (e) "Chief Restructuring Officer" shall have the meaning set forth in Section 4(a)(i).
 - (f) "CMS" means the Centers for Medicare and Medicaid Services.
 - (g) "Callections" shall have the meaning set forth in Section 4(a)(1).
 - (h) "Compliance Plan" shall have the meaning set forth in Section 5(a).
 - (i) "Consultants" shall have the meaning set forth in Section 4(b)(xii).
- (j) "Controlling Person" means any Person, who acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a Person submitting an Acquisition Proposal, Including any shareholder owning, directly or indirectly, legally or beneficially, more than 5% of the equity of such Person submitting an Acquisition Proposal, a management company or similar service provider (logether with a Person who is a Controlling Person of such management company or other business entity) and any other individual who, because of a relationship of any nature with the Person submitting an Acquisition Proposal, is in a position of secual control or authority with respect to the Person submitting an Acquisition Proposal, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the Person submitting an Acquisition Proposal.
 - (k) "CPI" shall have the meaning set forth in Section 6(b)(i).
 - (I) "CPI increase" shall have the meaning set forth in Section 6(b)(II)(1).
 - (m) "Dopository" shall have the meaning set forth in Section 4(ttk!).
 - (n) "Depository Account" shall have the meaning set forth in Section 4(a)(i).
 - (0) "District Default" shall have the meuning set forth in Section 10(a).
 - (p) "Emergent Expenses" shall have the meaning set forth in Section 4(f)(ii)
- (q) "GAAP" means United States generally accepted accounting principles and practices as in effect from time-to-time as applied by Manager.
 - (r) "Governing Body" shall have the meaning set forth in Section 3(a).

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- (s) "Governmental Authority" means any federal, State or local judicial, executive or legislative body or governmental municipality, department, commission board, agency or authority, including government contractors for federal health programs, and including without limitation, the State of California Health and Human Services Agency Office of Statewide Health Ptarming and Development.
- (t) "Governmental Depository Account" means a Depository Account established for the sole purpose of receiving checks, wire transfers and other forms of electronic payments governed under the Social Security Act (42 U.S.C. §§ 1395 et seq.), including payments under Medicare, Medicare and TRICARE/CHAMPUS, and payments administered or regulated by the Centers for Medicare and Medicard Services of the United States Department of Health and Human Services (collectively "Governmental Health Favers").
- (u) "<u>HIPAA</u>" means the Health Insurance Portability and Accountability Act of 1990 and the regulations promulgated pursuant thereto
 - (v) "Hospital" shall have the meaning set forth in the Recitals.
- (w) "Hospital Law" means <u>Collifornia Health and Safety Code 532000</u> et seq., including those provisions of the <u>California Health and Safety Code applicable to skilled nursing facilities.</u>
 - (x) "ineligible Person" shall have the meaning set forth in Section 5(f).
 - (y) "Jeopardy Eveni" shall have the meaning set forth in Section 10(d)(ii).
- (z) "<u>Law</u>" means any constitutional provision, statute, ordinance, or other law, rule, regulation, interpretation, judgment, decree, or order of any Governmental Authority or any settlement agreement or compliance agreement with any Governmental Authority, including Hospital Law, as the foregoing may be revised, replaced or amended from time to time.
 - (se) "Manager" has the meaning set forth in the Preamble.
 - (bb) "Manager Default" shall have the meaning set forth in Section 10(c).
 - (cc) "Manager Parties" shall have the meaning set forth in Section 3(e)().
 - (dd) "Mester Account" shall have the meaning set forth in Section 4(a)(iii).
 - (se) "Medical Staff" shall have the meaning set forth in Section 3(e)(i).
- (ff) "Net Adjusted Management Fee" shall have the meaning set forth in Section 6(b)(i)X2)
- (gg) "OIG" means the Office of inspector General of the Department of Health and Human Services.
 - (hh) "Operating Contracts" shall have the meaning set forth in Section 4(n)(ii).
 - (ii) "Operating Period" shall have the meaning set forth in Section 2(a).

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- (ji) "Operations" means the healthcare and other operations and programs which are conducted at the Hospital and the Other Facilities, as the same may be modified by Manager from time to time during the Operating Period.
- (kk) "<u>Other Fectities</u>" means those facilities and businesses identified on <u>Exhibit</u>

 <u>A_io</u> this Agreement, together with such other facilities and clinics owned, leased or otherwise operated by the District that Manager elects, in its sole and absolute discretion, to manage hereunder, by notice to the District from time to time.
- (ii) "<u>Person</u>" means an association, a corporation, a limited liability company, an individual, a partnership (general or limited), a trust, a hospital district organized under the Hospital Law, or any other entity or organization, including a Governmental Authority.
 - (mm) "PHI" shall have the meaning set forth in Section 4(skiv).
 - (nn) "State" means the State of California.
 - (oo) "Suspended" shall have the meaning set forth in Section 9(b).
 - (pp) Termination Fee* shall have the meaning set forth in Section 10(b)(1)

2. Operating Period

- (a) <u>initial Operating Period</u>. The Initial term of this Agreement shall commence on the Effective Date and end on the date five (5) years thereafter (as such initial term may be renewed pursuant to <u>Section 2(b)</u>, the "Operating Period").
- (b) Extension of Operating Portod. Upon completion of the initial Operating Period or of any subsequent renewal Operating Period, this Agreement shall automatically renew for additional five (5) year periods unless either party shall send a written notice of intent not to renew the Agreement to the other party not less than six (6) months prior to the end of the initial Operating Period or then current renewal Operating Period, as applicable. Each renewal Operating Period shall be on the same terms and conditions set forth herein. Notwithstanding the foregoing, nothing herein is intended to permit the Operating Period to exceed beyond any time period as is respect to bonds hereafter issued by the District. In the event the Operating Period exceeds any permissible time period, then the Operating Period shall be conformed to the maximum time period permitted under applicable Law.
- (c) <u>Irrevocability of Agreement.</u> The District acknowledges and agrees that Manager is entering into this Agreement in reliance on the long term nature of this Agreement, and further acknowledges that the rights, duties, powers and authority of each of the parties hereto, are intended to be non-terminable throughout the Operating Period, except in accordance with the express provisions of this Agreement. The District acknowledges that neither party will achieve the benefits intended to be achieved if the District has any continuing right or power to terminate this Agreement, or the relationship hereby created, except in accordance with the express provisions of this Agreement. Accordingly, the District, as a substantial inducement to Manager to enter into this Agreement and provide its proprietary systems and knowledge, hereby irrevocably waives and relinquishes any right, power or authority existing at law or in equity to terminate this Agreement, except in strict accordance with the express provisions of this Agreement. The parties further

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EXHIBITA

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Case 16-10015

hereby acknowledge that any breach of this Section will cause irreparable and permanent damage to Manager, not compensable by money damages.

3. General Responsibilities of the Parties.

(a) Appointment. The District hereby engages and appoints Manager, and Manager hereby accepts such engagement, to exclusively provide day-to-day management services to and for the District with respect to the Hospital and the Other Facilities. Anything herein to the contrary notwithstanding, Manager's authority hereunder shall be limited as described in Section 3(b), and Manager shall otherwise perform its services hereunder in accordance with Section 5. Manager's duties shall include but are not limited to financial and operating system management, preparation of proposed annual budgets, purchasing, contracting support and relationship management, expansion of the Hospital and the Other Facilities or the services offered, preparation and implementation of staffing plans, recruitment of personnel, and supervision of the day-to-day Operations of the Hospital and the Other Facilities Manager shall perform its survices hereunder in accordance with the District Bylaws, the policies lawfully adopted by the Board of Directors of the District (the "Governing Body") and applicable Law. It is understood and agreed that to the extent that (i) Hospital Law is in conflict with any of the District's Bylaws, then Hospital Law shall control or (ii) the District's Bylaws or policies conflict with the terms hereof shall control or (iii) the District's Bylaws or policies conflict with the terms

(b) General Control of the District.

- (i) Manager expressly acknowledges and agrees that the District exercises, and at all times during the Operating Period, shall exercise the ultimate control and direction of the Operations. Subject to the provisions of Section 3(a), Manager shall operate within the reasonable perameters, policies and procedures adopted by the Governing Body and communicated to Manager by the District. (and provided that such parameters, policies and procedures do not, in Manager's reasonable judgment, jeopardize the quality of patient care provided at the Hospital and the Other Facilities, or require Manager or the District to engage in any Itlegal or uneithical acts, or breach any express provision of this Agreement or any other agreement of the parties). Notwithstanding the ultimate control to be exercised by the Governing Body, Manager shall comply with its obligations under this Agreement, provided that the District shall not interfere with its ability to do so.
- (ii) Notwithstanding anything to the contrary herein, any change in the licensure type, payment model chosen by the Hospital, classification or operations of the Hospital other than as a Medicare participating critical access hospital (and/or as a sole community hospital, as applicable) and sittled nursing facility, shall be subject to the prior written approval of the Governing Body and Manager.
- (iti) The District shall timely furnish Manager with sufficient funds to timely pay the expenses relating to the Operations, including funding of both operating expenses and non-operating expenses. Notwithstanding the foregoing, the District shall not be in default in its obligations to furnish Manager with sufficient funds to pay its

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operating and non-operating expenses relating to the Operations if the District has insufficient revenue available for such purposes from the Operations and borrowings (and the District may, but shall not be required to, borrow funds to pay shortages in funds available to pay expenses relating to its Operations). Subject to the more expedient funding requirements set forth in Section 4(b)(vill), if funds in the Master Account are insufficient, Manager shall notify the District of the need for funds by submitting Manager's fund request to the District and the District shall supply the requested funds within three (3) days of Manager's notice to the District of the need for same, provided that for unanticipated Emergent Expenses, Manager shall have the right to provide a shorter notice period. Manager shall not be obliged to fund the District expenses hereunder or provide funds to accommodate shortfalls in revenue, however, Manager may, in its sole and absolute discretion, advance funds as provided in Section 4(IXI)(1). Manager shall not be in default herounder if Manager's failure to comply with the lerms of this Agreement is due to the lack of adequate funds provided by the District.

(iv) The District shall assure that its funds are used to support the Hospital and the Other Facilities and to provide charitable care therein and are not diverted to other uses.

(c) Cooperation and Responsiveness.

- (i) The District and its Governing Body shall fully and timely cooperate in good faith with Manager and shall be responsive and available to Manager during the Operating Period in order that Manager can carry out its duties and obligations hereunder.
- (ii) In any instance in which the District (or the Governing Body) has an obligation to provide input or decide an issue, or provide (or withhold) its approval or consent under the terms of this Agreement, the District (or the Governing Body) shall do so in accordance with the provisions of Section 11(0). Unless a specific period of time is set forth herein for a particular act, a reasonable period of time for the District to provide input or decide an issue, or provide (or withhold) its approval or consent shall generally be within five (5) to seven (7) calandar days.
- (III) In addition to its obligation to provide funds, the District will timely provide Manager with the necessary equipment, information and other resources to enable Manager to fully and timely perform its services hereunder.

(d) Relationship.

 Except as otherwise required by applicable Law or as specifically authorized hereunder, the District shall not interfere, directly or

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indirectly, with Manager's decisions or the daily Operations, and shall not interfere with Manager's ability to perform its obligations hereunder. Except upon request of Manager, individual members of the District's Governing Body shall not issue directions to Manager, except following and in accordance with the formal actions of the District's Governing Body.

- (ii) The District representatives' communications, formal and informal, regarding Menager and the Operations with Persons associated or affiliated with the Operations or Manager, shall be conducted exclusively with Persona designated by Manager's chief executive officer.
- Neither the District nor its Governing Body, on the one hand, nor Manager or any of the other Manager Parties on the other hand, shall (nor cause or encourage others to) disclose confidential or negative information regarding, or take any action or omit to take any action that is materially detrimental to the reputation of (anything which might lend to bring a party into public disrepute, hatred, contempt, scorn, scandal, or ridicule, or which might tend to reflect unfavorably on or otherwise degrade such party), the other or make any statements, verbally, in writing or otherwise, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the other, to anyone other than the Manager's chief executive officer or the District's President, or as may be required under Hospital Law. Notwithstanding the foregoing, negative information may be discussed within official District Governing Body meetings and in connection with its internal operations, provided that if such information is used in a non-confidential forum, the party bringing up such information shall use reasonable efforts to verify the veracity and objectivity of such information prior to disclosing same in a non-confidential forum. However, nothing herein shall prevent the any party from testifying truthfully in a legal proceeding or governmental administrative proceeding. The parties acknowledges and agrees that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to, the news media, bondholders, industry analysis, competitors, strategic partners, vendors, employees (past and present), and clients.
- (iv) The parties acknowledge that; (1) this Section is a material provision of this Agreement; (2) any breach of this Section shall be a material breach of this Agreement, and (3) a breach of this Section would cause irreparable harm.

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(e) Medical and Professional Mallers.

- (i) All medical and professional matters relating to the care and treatment of patients requiring professional medical judgment shall remain the responsibility of the District medical director(s) and medical staff of the Hospital (the "Modical Staff").
- (ii) Subject to <u>Subsection 3(e)(i)</u>, Manager shall provide such oversight and support as Manager, in its sole and absolute discretion, deems appropriate for the Medical Staff's administrative affairs, including monitoring the performance of professional services by the Medical Staff and other licensed personnel.
- (iii) The District retains control and authority over all appointments to the District's Medical Staff, the granting of clinical privileges at the District to the extent required by applicable Law and applicable accreditation standards, and any actions taken with respect to Medical Staff members, including appeals of actions. Notwithstanding the foregoing, the Chief Executive Officer or his or her designes may grant an individual temporary clinical privileges for a period not to exceed the greater of (i) one hundred twenty (120) days or (5) such period as is allowed under applicable Law, all in accordance with accreditation agency requirements and the District's Bylaws.
- Standards of Performance. The District acknowledges that while Manager shall expend its commercially reasonable efforts in performing its obliquitions under this Agreement, Manager does not guarantee any particular results, notwithstanding projections which may be made by Manager. Manager's projections and forward looking statements are based on estimates and expectations, and reasonably available competitive, financial, economic and other data, and as a result are inherently uncertain. Actual results could differ materially from those anticipated as a result of a variety of factors. Manager shall use its commercially reasonable judgment in providing the services required under this Agreement. The parties acknowledge that implementation of the District's charitable care purposes may not permit the maximization of the District's profits. Manager shall, for and on behalf of the District, use commercially reasonable efforts to make recommendations and take actions required hereunder to assist the District to comply in all material respects with any material Law respecting the Hospital and the Other Facilities. The District covenants that it will, in good faith, consider all of Manager's recommendations regarding the Operations, and will support and implement, through policies and/or other appropriate actions of the Governing Body, the recommendations it deems reasonably appropriate. The District is a California Health Care District organized and operating under the Hospital Law with, Inter site, a charitable mission, and it has under the Hospital Law certain responsibilities and obligations, including, but not limited to, obligations to provide charity care and Indigent care. At all times, Manager, in managing the District, shall follow the charity and indigent care policies and obligations of the District (provided that the Hospital and the Other Facilities' financial obligations in that regard shall not be materially changed unless such change is required by applicable Law) and shell assist the District in meeting all of the District's required obligations under Hospital Law, the District will promptly notify Manager of any changes to any policy, procedure, or the District Bylaws which may impact Manager's rights or obligations under this Agreement, including but not limited to, those affecting the Hospital and the Other Facilities' charity care obligations.

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Duties of Manager

Hospitel Chief Restructuring Officer

Manager shall provide a Chief Restructuring Officer ("Chief Restructuring Officer') to provide the administrative and management services for the Hospital and the Other Fecilities during its period of restructuring, and until such time as the Manager has determined that this position is no longer necessary because the restructuring has been completed. Such Chief Restructuring Officer shall carry out the usual and customery duties of such position within the health care industry. The Chief Restructuring Officer shall be an employee or an independent contractor of Manager.

(b) Personnel.

- District shall remain the exclusive employer / contractor of the personnel of the Hospital and the Other Facilities,
- Without limiting the generality of the provisions in Section 4(b)(i), all (11) employees shall be employees of District for purposes of District's benefit programs or plans now existing or hereafter created, including compensation and payment and withholding of federal, state and local income, social security, unemployment, Medicare, other payroll and employment taxes, Section 125 plans, Section 403(b) ennuities. workers' compansation and health insurance. District is solely responsible for the administration of employee benefits, benefit plans and programs for its employees. All wages, salaries, benefits and other expenses and charges incurred in connection with the District's employees shall be borne by the District.
- In compilance with applicable Law, Manager shall have the sole right and obligation to hire, fire and supervise all District employees. including a chief executive officer for the Hospital, and the licensed administrator for the skilled nursing facility, and to determine their compensation. Manager shall also have the sole right and obligation to recruit, employ, train, discipline, assign and reassign District employees, as needed for the Operations, and shall provide oversight and consultation regarding performance standards, personnel policies, and employee benefits.
- Manager shall be responsible for the development and implementation of policies and practices, in conformity with the terms of this Agreement and in accordance with applicable Law, relating to personnel management services only, including without limitation. enrolling, recruiting, interviewing, selecting, training, evaluating, replacing, supervising, disciplining, reassigning and terminating District employees, subject to Governing Body approval of such policies as may be required pursuant to 22 C.C.R. § 72521 or patient care policy committee approval as may be required pursuant to 22 C.C.R. § 72523,

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> **EXHIBITA** 14

- (v) Manager shalf confer with the District in determining the general range of the number and qualifications of employees required for the efficient and effective operation of Hospital and the Other Facilities and in establishing and revising in-service training programs, and job descriptions, all in order to accomplish the goals and objectives of Hospital and the Other Facilities. However, Manager shall have the utilimate authority to hims, fire and set the terms of employment for all such employees. To discourage nepotism and conflicts of interest, the District and its representatives agree that they shall not request or require that Manager: (i) hire or fire any specific employee or (ii) select, reject or promote an employee or contractor (or its' personnet) based on the individual's political sfilliation or beliefs or as a reward for political services or as a form of political patronage, directly or indirectly. Likewise, the District shall not refer potential employees or contractors to Manager for hiring or engagement.
- (vi) Manager may hire or retain any consultants, accountants, attorneys or other professional personnel (collectively, "Consultants") which Manager, in its sole and absolute discretion, determines is necessary or appropriate to assist Manager in carrying out its duties and responsibilities under this Agreement subject to the requirements of 22 C.C.R. § 72511. The expense of any Consultants so retained shell be an expense of the District, but Manager shall not retain any such Consultants without the approval of the Governing Body, if the cost of such services shall exceed \$100,000 in any calendar year for such services, unless otherwise set forth in the approved Annual Budget.
- (c) <u>Patient Safety Quality and Purformance Measurement</u>. Manager shall assist in the implementation of the Hospital and the Other Facilities' patient safety, quality, and performance measurement program. Manager shall provide oversight and facilitate the Hospital and the Other Facilities' patient safety, quality, regulatory readiness, infection control/prevention, and service excellence performance metrics. Manager activities shall include:
 - Coordination, data collection/analysis and recommendation/ facilitation of evidence-based practices to address the following:
 - (1) Clinical program measures, hospital-acquired conditions, and other priority patient populations;
 - Patient and staff safety, including the reduction of preventable adverse events;
 - Infection control and prevention services to include electronic surveillance, tracking and transmission of required data;
 - (4) Regulatory and accreditation readiness and compliance tracking:
 - (5) Evidence-based policy and procedure development; and

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(6) Patient satisfaction and loyally

- (ii) Manager will also recommend strategies to enhance the Hospital's patient safety and quality department infrastructures, assist the Hospital and the Other Facilities in implementation of evidence-based order sets, and disseminate best practices. The District shall be responsible for all expenses associated with surveys, licensure, permits, and accreditation.
- (iii) Manager shall use reasonable efforts, on a consultative basis, to guide or direct the District in maximizing its total performance score under the Federal government's value-based purchasing programs, including but not limited to the clinical process of core measures, the patient experience of care dimensions; and in connection with the Consumer Assessment of Health Care Providers and Systems surveys.
- (d) <u>Standard Forms</u>. Manager shall recommend standard formats for all charts, involces, and other forms used in the Operations. Manager shall make reasonable efforts to ensure that such standard forms remain current as to applicable Law, as well as industry standards.
- (e) Royanue Cycle Management. Manager shall provide advice, direction, and reasonable assistance to the District and assist it in overseeing its revenue cycle management for the Hospital and the Other Facilities. Services provided by Manager include making recommendations regarding Hospital and the Other Facilities':
 - Charge master or similar schedule of charges;
 - (ii) Adjustment coding;
 - (iii) Patient / client billing and collections, and
 - (iv) Coding and billing compliance audits.

All direct, out-of-pocket fees, expenses and charges incurred in connection with actual revenue cycle management shall be the District expenses.

(f) Annual Budget.

(i) Manager shall be responsible for preparation, presentation, monitoring, and reporting of the annual operating and capital budgets (collectively, the "Annual Budget"). Each proposed Annual Budget shall set forth an estimate of operating revenues and expanses (including capital expenses) for the next flecal year, together with an explanation of anticipated changes in utilization, charges to patients and clients, payroll rates and positions, non-wage cost increases, and all other factors differing significantly from the then-current year. Manager shall be responsible for the oversight and review of the Annual Budgets, with final recommendations presented to the Governing Body for approval. Each Annual Budget will be created

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Subject to the limitations set forth in Section 3(f). Manager shall take commercially reasonable efforts to oversee the management of the Hospital and the Other Facilities so that the actual revenues, costs, and expenses of the operation and maintenance of the Hospital and the Other Facilities shall be consistent with the approved Annual Budget, Inclusion of any Item within the Annual Budget shall constitute all nocessary approval of the Governing Body for Manager to take such act to effectuate the budgeted Hern. Notwithstanding anything to the contrary herein, Manager shall have the right, in its sole and absolute discretion, to make any expenditures necessary on an emergent basis to avoid or mitigate damage to the Hospital and the Other Facilities, obtain equipment repairs or to avoid or mitigate injury or potential injury to Persons or property or that are necessary on an emergent basis to comply with any Law or to cure or prevent any violation of any Law, whether or not provided for or within the amounts provided for in the approved Annual Budget for the applicable year (collectively, the "Emergant Expenses") Manager shall use its reasonable efforts to give the District edvance notice of any such Emergent Expenses, and in any event, shell give notice as soon as reasonably practicable after such expenditures, but in no event later than fifteen (15) days.

(g) Bank Accounts.

- (i) The District shall maintain one or more bank accounts (the "Depository Accounts") at one or more finencial institutions (a "Depository"), together with resident trust fund accounts as required pursuant to 22 C.C.R. § 72529. The District shall cause all amounts received by or on behalf of the District in connection with the operation, maintenance, or ownership of the Hospital and the Other Facilities (the "Collections") to be deposited in the Depository Accounts and resident funds to be deposited into the resident frust fund accounts. However, Collections received from Governmental Health Payers shall be deposited into a separate Governmental Depository Account. Funds in the Governmental Depository Account (other than the Governmental Depository Account (other than the Governmental Depository Account.)
 - (1) The District shall enter into an agreement with each Depository to cause the Depository to receive such payments and deposit them into Governmental Depository Account in the name of the District, and sweep the proceeds of such account on a daily basis. Into the Depository or Mester Account as designated by Manager.
 - (2) The foregoing instructions of the District with respect to the Government Depository Account shall be revocable at the

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sale instruction of the District, to the extent required by applicable Law; provided, however, that, unless otherwise required by applicable Law, if the District revokes such instructions, it shall be in material default of this Agreement and Manager shall, in addition to all other rights hereunder, be entitled to seek an order or judgment from a court of proper jurisdiction for specific performance to sweep the Governmental Depository Account pursuant to this Agreement

- (ii) Manager, acting in the District's name and as agent of the District, as provided in <u>Section 4(h)</u> shall make or direct to be made timely deposits, in the Depository Accounts or the Master Account of all Collections which Manager receives.
- (III) The District shall provide disposition instructions to the Depository to transfer, at the end of each business day during the Operating Period all amounts in the Depository Account into a bank account controlled by Manager (the "Master Account"). Except for the transfers to the Master Account, the District shell not remove, disburse, transfer, use, pledge, hypothecate, grant a lien on or security interest in, or otherwise encumber any funds in the Depository Accounts or Master Account.
- (iv) The District shall execute such documents as any Depository or Manager may reasonably require, Including without limitation, a limited power of attorney, to permit the Depository to receive the Collections, endorse any checks, drafts, notes, money orders, cash, Insurance payments, and other instruments relating to such Collections, deposit the Collections into the Depository Account, and to transfer the Collections each day from the Depository Account into the Master Account. The District shall be responsible for all fees, costs and expenses incurred in connection with maintaining the Depository Account, including all fees, costs and expenses of a lockbox which may be deemed destrable and appropriate by Manager; provided, however if and to the extent permitted by applicable law, at the request of Manager, the Collections or any part thereof, shall be deposited directly into the Master Account.
- (v) Manager is hereby authorized to make payment from the Master Account or other accounts of the District, including the Depository Account, to itself and its Affiliates of any amounts due to it or any of them by the District under this Agreement or otherwise, including, without limitation, the Management Fee, and the relimbursement of expenses and advances, and the District acknowledges that any amounts due to Manager or any of its Affiliates under this Agreement, including without limitation, any Management Fee, shall be sentor in priority, and shall not be subordinate to the payment of, any amount due to any other craditor of Company, unless otherwise agreed to in writing by Manager and shall be paid as provided in Section 6(f).

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- (vi) Manager shall have no Hability or responsibility for any loss resulting from the insolvency, malfeasance or non-feasance of any Depository with respect to the District bank accounts.
- (vii) Manager shall have the right to make disbursaments from the Master Account, the Depository Account and other the District bank accounts, on behalf of the District in such amounts and at such times as the same are required to operate the Hospital and the Other Facilities, as provided in <u>Section 4(i)</u> and to pay the expenses and debts incurred in connection therewith. If the District talls to timely advance funds for to pay expenses, Manager shall have the right, in its sole and absolute discretion, but not the obligation, to advance such funds, as provided in <u>Section 4(MIX1)</u>.

(h) Charges and Collections of Accounts.

- (i) Manager shall assist the District in billing and collecting for all fees payable with respect to all services, equipment, devices and supplies provided to patients and clients at the Hospital and the Other Facilities, including the enforcement of the rights of the Hospital and the Other Facilities and/or the District as creditor under any contract or in connection with the rendering of any service in accordance with the District's charity care policies. All out-of-pocket costs and expenses relating to the billing and collection services, including without limitation, any fees or expenses payable to collection agencies, shall be for the account of the District.
- (ii) The District shall direct all third party payors to provide Manager with copies of all remittance edvices in electronic format or in such other format as shall be agreeable to Manager.
- (iii) The District hereby irrevocably appoints Manager during the Operating Period as its true and lawful attorney-in-fact to take the following actions for and on behalf of and in the name of the District and agrees to execute the Limited Power of Attorney, attached hereto as <u>Exhibit B</u> and any other instrument reasonably requested by Manager to evidence such appointment to:
 - (1) Bill patients and third party payors (including reimbursement or indemnification from insurance companies and plans, and other third party payors or fiscal intermediaries) in the name and provider number(s) of the District;
 - (2) Collect in the name of the District from patients, insurance companies and all other third party payors (other than from Governmental Health Payers), all charges resulting from the provision of items and services rendered to patients of the Hospital and the Other Facilities, and to collect capitated payments and all other charges, fees or salaries resulting from or related to the Operations, including but not timited to any and all incentive funds and funds from shared risk and

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- bonus pools under any risk sharing arrangements wherein the District is the provider of medical services, in whole or in part:
- (3) Take possession of and endorse in the name of the District all cash, notes, checks, money orders, insurance payments, and any other instruments received as payment of accounts receivable for deposit into the Depository Account or Master Account or other account, as applicable.
- (4) Deposit all such Collections directly into the Depository Account or the Master Account, other than with respect to Governmental Health Payer receivables;
- Deposit Governmental Health Payer receivables into the Governmental Depository Account;
- (6) Make withdrawals from the Depository Account and other the Depository Accounts for such purposes as are consistent with the provisions of this Agreement;
- (7) Place accounts for collection, settle and compromise claims, and institute legal action for the recovery of accounts; and
- (6) Execute all instruments or documents necessary or appropriate in connection with the above.
- (iv) With respect to Government Health Payer patients and clients, Manager shall bill the Governmental Health Payers for same in the name of and on behalf of the District.
- (v) At the District's expense, Manager shall be entitled to obtain the assistance of one or more billing and/or collection agencies to bill and/or collect sums due to the District, in accordance with the District's charity care policies and applicable Law, including, without limitation, Section 9007 of the Patient Protection and Affordable Care Act
 - (vi) Manager, on behalf of the District, may, in its name or in the name of the District, but in any event at the expense of the District, appeal or contest any action taken by any Governmental Authority against the District and/or the Operations, including, without limitation any overpayment claims, or contest by legal proceedings the validity of any Law adverse to the District and/or the Operations; provided, however, that if Manager pursues any such appeal or contest, or asserts any such legal proceeding, the District shall adequately secure and protect Manager from all loss, cost, damage or expense by bond or other means satisfactory to Manager if any action taken by any Governmental Authority against the District and/or the Operations related to such action could result in a loss, cost, damage, or expense to Manager. Natwithstanding the foregoing, Manager shall not pursue any such appeal or contest, or assert any such legal proceeding, which involves in excess of \$100,000, without first obtaining the prior approval of the Governing Body, which will not be unreasonably withheld.

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(I) Payment of Expenses.

- (i) Manager shall provide oversight of the District's funds in connection with the timety payment of the District's Rabilities and other obligations, including wages of District employees, subject to conformance with applicable Law relating to the use of public funds. Manager shall review the payables of the District and shell cause payment thereof to be made from the Depository Account, the Master Account and / or from funds otherwise provided by the District. If the District falls to timety advance funds for such expenses, Manager shall have the right, in its sole discretion, but not the obligation, to advance such funds as provided in Section 4(IXIXI).
- (ii) The District hereby grants to Manager, to the extent permitted by applicable Law, throughout the Operating Period, an exclusive special power of attorney and appoints Manager, to the extent permitted by applicable Law, the District's exclusive true and lawful agent and attorney-in-fact, and Manager hereby accepts such special power of attorney and appointment, to: (i) sign checks, drafts, bank notes or other instruments on behalf of the District, (ii) make withdrawats from the Depository Account, the Master Account or other the District accounts (other than resident trust fund accounts, which shall be held solely for the banefit of applicable residents) for payments specified in this Agreement and (iii) designate, remove, and change such signatories on such accounts as Manager deems necessary or appropriate from time to time.
- (iii) Upon request of Manager the District shall execute and deliver to any applicable financial institution such additional documents or instruments as Manager may reasonably request to evidence or effect the special power of alterney gravited to Manager by the District pursuant to this Section. The special power of attorney granted herein is coupled with an interest and shall be irrevocable except with Manager's written consent.
- (IV) It is specifically agreed and understood, however, that Manager's obligations under this Section 4 are subject to availability of the District funds to make such payments. Nothing contained herein shall obligate Manager to make any such payments from its own funds or resources or to advance any monies whatsoever to the District. If the District falls to limely advance funds, Manager shall have the right, in its sole and absolute discretion, but not the obligation, to advance such funds, as provided in Soction 4(i)(i)(1) Notwithstanding the foregoing, no advance of funds hereunder shall cure the District's default resulting from a failure to timely provide funds as required hereunder, but it is understood that pursuant to Section 3(b)(iii), the District may not be in default for the failure to limely provide funds as set forth thorein. Manager shall not be liable either primarily or as guarantor for debts of the Hospital or the Other Facilities, or the District under the terms of this Agreement. The District shall be responsible for payment of all legal fees and

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collection fees incurred by Manager If the District fails to pay its invokes timely.

(I) Pladge of Credit.

- Manager shall not engage in any financial lending, financing or banking actions that result in items, mortgages, lines of credit, security interest or financial obligations in the name of the District, without the prior written consent of the Governing Body. Prior to requesting consent for approval, Manager shall provide a detailed proposal to the Governing Body describing the amount of required funding, the purpose of the financing, the strategic plan to generate sufficient revenue to repey such financing and all other atternatives evaluated to obtain sufficient funding.
 - Notwithstanding anything in this Agreement to the contrary, in the event the District fails to timely advance funds as required hereunder and/or meet any of its payment obligations under this Agreement, Manager shall have the right, but not the obligation, in its sole and absolute discretion, to advance funds or agree to undertake to advance funds to any Person, as a loan to the District to meet the shortfell caused by the District's failure. As set forth in Section 4(j)(iv), such advance of funds by Manager, however, shall not cure any default, if any under Section 3(b)(iii), of the District as a result of its failure to timely provide funds. All sums advanced by Manager pursuant to such agreements or undertakings shall be for the District's account. The District shall pay Manager Interest on all advanced funds at the rate set forth in <u>Section G(e)</u> and the principal upon demand by Manager, Any advance made shall be evidenced by a promissory note issued by the District in an amount equal to the amount advanced.
 - (2) To the extent permitted by applicable Law, to the extent Manager advances funds, this Agreement constitutes a security agreement pursuant to which the District provides Manager with a iten on (a) all accounts receivable of the District, and (b) any and all of the District's other assets, as specified by Manager, to the extent allowed by Law, and Manager shall have the right to file a Uniform Commercial Code financing statement with respect to such obligation without the signature of the District. In addition, Manager may request that it be provided with additional collateral for any advanced funds. District agrees that Manager's security interest in the accounts receivable and any other assets shall be in a first priority position.
- (ii) Except as provided in Section 4()(i), Manager shall not, under any circumstance, in the name of, or on behalf of, the District borrow any money or execute any promissory note, bill of exchange or other obligation, or dispose of any asset of the District not in the ordinary

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EXHIBITA 22

course of business, without the consent of the Governing Body; and only to the extent allowed by all applicable Law.

- (k) <u>Information Technology</u> Monager shall provide oversight of the Information technology activities associated with the Hospital and the Other Facilities Manager shall be responsible for oversight of the selection, negotiation, installation, and implementation of the information lechnology systems and structures at the Hospital and the Other Facilities consistent with the Annual Budget. Manager shall seek approval from the Governing Body of any new systems and/or termination of any existing agreements, which approval shall not be unreasonably withheld. The District shall be responsible for the direct expense of all hardware and software for the information technology activities of the Hospital and the Other Facilities. The District shall be responsible for the cost of maintenance and support of all such hardware and software, as well as the training of Manager and the District employees, physicians and other applicable personnel on systems and software provided, however, that Manager shall not incur any expense in excess of \$100,000 unless set forth in the approved Annual Budget or otherwise approved by the Governing Body. For avoidance of doubi, Manager shall not perform the information technology maintenance for the District under the terms of this Agreement.
- (i) <u>internal Audit</u>. Menager shall provide oversight of the District's routine audits of internal procedures and systems including auditing of billing, information systems, payroll, and other areas as identified and shall perform such internal audits as Manager, in its reasonable discretion, deems necessary for the purposes of providing its services hereunder. External audits, if requested by and performed for the District, shall be the responsibility of the District. All direct, out-of-pocket fees, expenses and charges incurred in connection with such external and internal audits shall be a District expense. All internal and/or external audit expenses in excess of \$10,000 shall be approved by the Governing Body, unless such expenses are set forth in the approved Annual Budget.
- (m) <u>Managed Care Contracting</u>, Manager shall provide recommendations regarding managed care contracts and rates, and assist the District in the negotiation and consummation of such contracts, and monitoring of contract effectiveness and compliancs.

(n) Operating Contracts.

- (i) Manager shall assist the District in negotiating and securing all third party Operating Contracts necessary or desirable for the proper and efficient management and operation of the Hospital and the Other Facilities.
- (ii) Notwithstanding Section 4(i). Manager may enter into, or moulify, supplement, amend, discharge, or terminate, or grant waivers or releases of obligations under such contracts leases, licenses, instruments, and other agreements ("Operating Contracts") in the name of and at the expense of the District, as may be deemed necessary or advisable by Manager for the furnishing of all professional, consulting, and staffing services, concessions drugs, supplies, utilities, equipment, property maintenance insurance and other products, goods, and services as may be necessary or appropriate from time to time for the maintenance and operation of the Hospital and the Other Facilities, or as may otherwise be necessary or appropriate to carry out Manager's obligations under

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this Agreement. Subject to the terms hereof, Manager is hereby expressly authorized, as the District's agent, to execute and deliver any of such Operating Contracts in the name of and on behalf of the District, and presentation of a copy of this Agreement shall constitute conclusive evidence of such agency; provided, however that, Manager is also authorized to enter into and maintain in its own name any national and regional contracts in which the District may participate, as well as such other contracts for the District which, in the Judgment of Manager, are advisable to be entered into in Manager's name. Upon Manager's request, the District shall execute such agreements, contracts, leases. Instruments, documents and other Agreements as Manager shall determine are desirable to facilitate the operation and management of the Hospital and the Other Facilities. With respect to all cost and expenses associated with Operating Contracts in Manager's name, the District shall reimburse Manager for all such costs and expenses and / or pay such costs and expenses directly, at Manager's discretion. Manager is expressly authorized to contract, in the name and on behalf of the District, for the provision by Manager or its Affliates of any services

(iii) In the event of a termination of this Agreement which results in no further relationship between the District and Manager, Manager shall cause any contracts, including Operating Contracts, it has entered into in its own name to manage and operate the Hospital and the Other Facilities pursuant to this Agreement for the benefit of the District to be assigned to the District and the District shall assume the obligations under all such agreements and shall indemnify Manager from and against any liability

to be provided with respect to the Operations.

- (iv) All such Operating Contracts in excess of \$100,000 or which are for amounts which exceed the line items set forth in any approved Annual Budget shall be subject to approval by the Governing Body, such approval not to be unreasonably delayed or denied (unless the items or services that are the subject of the Contract in excess of \$100,000) have been approved previously in the Annual Budget.
- (v) The expense of such third party contracts shall be a direct expense of the District. Manager shall not be obliged to pay for any the District purchases from its own funds nor shall Manager be obliged to guarantee, directly or indirectly, any debts of the Hospital or the District under the larms of any purchasing arrangement, if the District fails to limely pay amounts due under such arrangements, Manager shall have the right, in its sole discretion, but not the obligation, to advance the funds necessary to satisfy such obligations, as provided in Section 4(IXIXI).
- (a) Insurance. Manager shall consult with the District as to the type of insurance or self-insurance, amount of coverage thereunder, deductibles and/or self-insured retentions therefor, premiums therefor, and issuers thereof to be carried with respect to the Hospital and the Other Facilities and the Operations. Approval of any change to the types or limits of insurance

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coverage for the District shall be made by the Governing Body. he District shall, solely at its own expense, obtain and maintain in full force and effect throughout the Operating Period the following policies of insurance or salf-insurance coverage:

- (p) Comprehensive general liability insurance, including personal injury and property damage liability insurance naming the District and Manager ea insureds.
- (q) Property and casualty insurance, including coverage for all Buildings and their contents, including boiler insurance naming the District and Manager as insureds.
- (r) If deemed necessary by the District or Manager, comprehensive automobile flability insurance naming the District and Manager as insureds.
- (a) Worker's compensation and employer's liability insurance and other similar insurance naming the District and Manager as insureds for the District's and Manager's employees.
- (1) Professions' liability insurance covering all Operations and, to the extent available, directors and officers insurance, naming the District, and Manager's executive employees) as named insureds. The professional liability insurance shall afford minimum protection (which may be affectuated through primary and/or excess coverage) of not less than \$1,000,000.00 combined single limit for demage in any one occurrence and not less than \$3,000,000.00 aggregate for all occurrences. The insurar must be licensed by the California Department of Insurance and have a general policyholders railing of not tess than A-X or better by Best's Key Railing Guide and with a claims paying ability rating from S&P of oi least AA or an equivalent alling from another rating agency acceptable to Manager. Manager may require that the District obtain from the insurer a statement as to good standing with the California Department of Insurance.
- (u) Commercial umbreils or excess fiability coverage and, to the extent available, regulatory insurance coverage, covaring all Operations, naming the District and Manager as named insureds. The commercial Umbreils and Excessive Liability Insurance shall afford minimum protection (which may be effectuated through primary and/or excess coverage) of not less than \$1,000,000.00 combined single limit for damage in any one occurrence and not less than \$3,000,000.00 aggregate for all occurrences, insuring Manager and the District and their respective employees and representatives in connection with Operations. The insurer must be licensed by the California Department of insurance and have a general policyholders rating of not less than A-X or better by Best's Key Rating Guide and with a claims paying shifty rating from S&P of at less AA or an equivalent rating from another rating agency acceptable to Manager may require that the District obtain from the insurer a statement as to good standing with the California Department of insurance,
- (v) Insurance Specifications The foregoing insurance shall meet the following specifications subject to the provisions of the District's joint powers agreements in BETA Healthcare Group and ALPHA Fund:
 - (i) All such policies of insurance shall be in such amounts as are deemed necessary by the District and Manager (but in no event less than the amounts set forth above) and shall contain a waiver of rights of subrogation clause against Manager and the District, to the maximum extent permitted under applicable Laws. The parties and

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their respective Affiliates shall not assert against the others, and each does heraby waive with respect to the others, any claims for any losses, damages, liabilities or expenses (including attorneys' fees) incurred or sustained by any of them on account of damage or injury to Persons or property arising out of the ownership, operation and/or maintenance of the Hospital and the Other Facilities, to the extent that the same would be covered and paid by the insurance required

to be carried horeunder. The District shall present such policies of

(ii) The District shall cause Manager, and any Person affiliated with Manager, that Manager so directs, to be named as additional insureds on the liability insurance coverage described above and on any flucity bond (if any), it is the intention of the parties that the insurance and bonds (if any) maintained by the District with respect to the Operations shall protect both the District and Manager and will be primary insurance for both parties for any and all losses covered thereby.

Insurance to Manager for review, upon request by Manager

- Certificates of insurence for the above coverages and a copy of the bond (If any) and accompanying endorsement naming Manager and/or Manager's employees (specifying his/her position), as applicable, shall be provided to Manager within thirty (30) days of the Effective Date and thereafter within thirty (30) days (I) of policy or bond (if any) renewal or replacement and (ii) of a request by Manager. All such policies shall provide that the subject policy may not be canceled, modified or roduced (including, without limitation, any amendment that would reduce the scope or limit coverage or remove any endorsement to such policy or cause the same to no longer be in full force and effect) except upon not less than thirty (30) days prior written notice to Manager. Originals of each renewal policy or certificates therefore from the insurers evidencing the existence theroof shall be provided to Manager at least thirty (30) days prior to, but not later than, the expiration or termination dates of the applicable policy. In addition, the District shall notify Manager in writing of any reduction or cancellation, increase of deductible or material modification of any term or condition of any of insurance coverage required herein within twenty-four (24) hours of receipt.
- (iv) Managar reserves the right to procure, at the District's cost, any or all of the foregoing required insurance coverage, if the District falls or refuses to do so, or if Manager in its sole discretion determines that Manager's procuring of such insurance is most efficient and/or in the financial benefit of Menager and/or the District. Manager is not required to act under this <u>Section 4(o)</u> and shall not be liable for its failure to offect or maintain recommended insurance upon the District's failure to do so.
- (v) Manager may obtain similar coverages for its benefit by taking out policies with such insurance companies as may be selected by Manager. Notwithstanding anything herein to the contrary, any

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insurance obtained by Manager hereunder may, at Manager's election, cover only Manager's interest. All direct, out of pocket fees, expenses and charges incurred in connection with obtaining such insurance shall be the District expenses

- (vI) If, during the Operating Period, the District is covered by general liability, professional liability, or other liability insurance on a "claims made" basis, then at least ten (10) days before the formination of this Agreement, the District shall procure and maintain, at the District's sole cost and exponse, an extended reporting endorsoment or "tail" insurance coverage for a period of at least four (4) years after the termination date of this Agreement, with coverage limits and deductible amounts equivalent to those required hereunder on the date immediately preceding the termination of this Agreement for such coverage for general, professional and other liability claims reported after the termination of this Agreement but concerning services provided during the Operating Period or the term of the claims made policy. The District shall provide Manager with a certificate evidencing such coverage no leter than ten (10) days before the termination of this Agreement. The District shall be named as the primary insured party on each policy of tall insurance and Manager shall be named as an additional insured. This Section will survive the termination or expiration of the Agreement.
- (vii) To the extent any insurance is placed through a self insurance program or captive insurance program, the District shall assure that such insurance shall compty with all opplicable Line, if such self-insurance or captive program is domiciled outside the United States, and the District shall assure that such coverage shall be, as appropriate, reinsured by reinsurers acceptable to Manager, in Manager's sole and absolute discretion.

(w) Purchasing

- (i) Manager shall be responsible for the oversight and management of the District's purchasing systems and procedures for the Operations at the supervisory / management level, including but not limited to oversight of:
 - (1) Capital purchasing:
 - (2) Researching and negotiating equipment based on Hospital and the Other Facilities' needs, specifications, and the Annual Budget;
 - (3) Reviewing oversight of inventory per levels (monthly audits); and/or
 - (4) Department purchasing structures and systems.

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- (ii) The District shall be responsible for the direct expense of all purchases and for all purchasing expenses, including but not limited to utilities, concessions, drugs, equipment, supplies, furniture or furnishings, inventory items, linens, machinery, medicines, and services
- (iii) In furtherance of the foregoing, all capital and other expenditures made shall be subject to the purchasing and procurement policies and procedures of the District, its Bylaws, and applicable Law.

(x) Marketing and Communications

(i) Manager shall provide consultation, advice and oversight related to marketing, advertising, and promotional issues, as well as marketing strategies and policies, as it deems necessary in its sole and absolute discretion.

(ii) Manager shell:

- (1) Provide direction and advice regarding the marketing program for the Hospital and the Other Facilities which shall be reasonably designed to inform and educate health care professionals and the general public served by the District of the existence of one or more of the services offered by the District.
- (2) Cause, to the extent required by applicable Law, including internal Revenue Code §501(r), a community needs health assessment to be prepared identifying the health and weifare needs of the residents who reside in the communities served by the District, and propose an implementation strategy to meet the outstanding community health needs identified in the assessment.
- (3) Cause to be prepared and distributed such descriptive booklets, brochures or pamphiets as Manager determines are necessary, in its sole and absolute discretion, to inform health care professionals and members of the public of the nature and requirements of State and Federal reimbursement programs for patients and how the same relate to the services offered at the Olstrict.
- (iii) All direct, out-of-pocket fees, expenses and charges incurred in connection with marketing, advertising, and promotional activities shall be at the sole cost and expense of the District.

(y) Medical Records.

(i) Manager shall be responsible for the oversight of the District's medical records activities at the executive levers, including development of department strategies and systems and planning.

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- (ii) During and following the expiration of the Operating Period, all records of the District shall remain the property of the District.
- (iii) All patient medical records shall be ireated as confidential so as to comply with all applicable Laws regarding the confidentiality of patient records, including, without limitation, the privacy standards promulgated under HIPAA.
- (iv) Manager shall be a "Business Associate" of the District, as that term is defined in the regulations implementing HIPAA, and Manager's use of "Protected Health Information," as that term is defined in the regulations implementing HIPAA ("PHI"). Manager shall execute and comply with the Business Associate Agreement attached hereto as Exhibit C.
- (v) Manager shall notify the District of any data breach that may occur at the Mospital and the Other Facilities, promptly after Manager becomes aware of same.
- (z) <u>Additional Reports</u>. Manager agrees to prepare, cause to be prepared or otherwise make systlebic reports regarding the Operations as follows:
 - (i) Within forty-five (45) days after the end of each fiscal quarter, Manager shall make available to the District the following information:
 - Relevant utilization statistics for the District for the prior quarter, including but not limited to patient volume and payor mix; and
 - (2) Financial statements and budget analysis for the District for the prior quarter, as provided in Section 7(c).
 - (ii) Manager shall provide to the Governing Body, on at least thirty (30) calendar days' notice, or sooner if necessary, to implement such required action, a description of any needed or discontinued services, refinencing proposals, expension plans or material changes in operating procedures. The proposal shall explain the reasons for the proposed activity.
- (28) <u>Anency.</u> Subject to (i) approval of the Governing Body for acts outside of the ordinary course of the Hospital and the Other Facilities' businesses, and (ii) the terms hereof. Manager shall have the right to act as the agent of the District and/or the Hospital and the Other Facilities in the procuring of licenses, permits and other approvals, the payment and collection of accounts and in all other activities necessary or appropriate or useful to Manager in the carrying out of its duties as specified herein.
- (bb) <u>Bankruptcy Advice</u>. Manager shall provide District with consultation and advice in connection with a potential filing by District of a proceeding under Chapter 9 of the Bankruptcy Code. If such polition is filed, Manager shall generally arrange and supervise the bankruptcy proceedings. The Chief Restructuring Officer shall serve as the representative of the District in connection with any such Chapter 9 bankruptcy proceeding.

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5. Logal Compliance

- (a) <u>Compliance Plan.</u> Manager has received a copy of the District's Compliance Policies and Procedures, including the Code of Conduct and the Physician Referral, Stark Law, and Anti-Kickback policies and procedures. Manager shall abide by these policies and procedures and applicable Law. Any recommendations and/or revisions of such policies made by Manager must be approved by the Governing Body. Manager will be given prompt written notice of any changes made to the foregoing. Manager may develop and recommend changes to the District's existing Compliance Plan (the <u>"Compliance Plan"</u>) for implementation during the Operating Period. Any such recommendations and/or revisions to the Compliance Plan must be approved by the Governing Body Manager shall use its commercially reasonable efforts to support the Compliance Plan. All costs of developing, implementing and maintaining the Compliance Plan shall be borne by the District.
- (b) <u>Government Requiations</u>. On behalf of the District, Manager shall, subject to the limitations set forth herein, use its reasonable commercial efforts to help assure that: (1) the District continuously compiles with all material applicable Laws, including without limitation, Hospital Law, State and Federal False Claims Act. Civil Monetary Penalty Law, State and Federal Anti-Kickbeck statutes, State and Federal self-referral prohibitions and applicable Medicare conditions of coverage and/or participation and (2) the District retains and maintains in good standing all necessary accreditations, licenses, permits, approvals and authorizations required for the ongoing operation of the Hospital and the Other Facilities.
- (c) <u>Accreditation Compliance</u>. Manager shall, subject to the limitations sat forth herein, take all steps necessary to assist the District to continue meeting the applicable accreditation agency's accreditation standards, as they exist or may be changed from time-to-time, and as may be applicable to the Hospital and the Other Facilities' then current accreditation(s). Manager shall have the right to select anti/or change the applicable accreditation agency for the Hospital, and if applicable, the Other Facilities, in its sole and absolute discretion.
- (d) <u>Licensure</u> Manager shall not act in a manner which adversely affects the licensure of the District by the State as a Medicare participating hospital and skilled nursing facility (or any other Medicare reimbursement designation as may be agreed to by the parties). Within thirty (30) days of receipt by the District or Manager of any final report or written assessment concerning the licensure of the District by the State as a hospital or skilled nursing facility or the accreditation of the District, Manager shall furnish a copy of such report to the District.
- (e) <u>HIPAA Compliance.</u> Manager shall compty with the applicable provisions of the Administrative Simplification and Privacy Rules of the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations promulgated pursuant thereto, and any related or applicable privacy Law regarding medical information and protected health information.
- (f) Ineligible Persons Disclosure Obligation. Manager shall use reasonable commercial efforts to monitor that none of Manager's or the District's employees employed at the Hospital and the Other Facilities have been sanctioned, debarred or suspended or otherwise deemed ineligible to participate in Medicare, Medicaid or other Federal health care programs, and procurement, or non-procurement programs (collectively, an "Ineligible Person"). Manager represents to the District that Manager is not an Ineligible Person nor has any pending proceedings or received notice of any action or proceeding to exclude, debar, suspend, or otherwise declare Manager ineligible under any federally funded health program. Manager shall notify the District

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within three (3) business days after becoming aware of any fact or circumstance that would make Manager an ineligible Person.

- Access to Records. Manager shall, in accordance with Section 1395x(v)(1) of Title 42 <u>United States Code until the expiration of four (4) years, or longer as may be required by</u> applicable Law, after the termination of this Agreement, make available upon written request to the Secretary of the United States Department of Health and Human Services, or, upon request, to the Comptroller General of the United States Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to verify the nature and extent of the costs of the services provided by Manager under this Agreement. Manager further agrees that in the event Manager carries out any duties under this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve-month period with a related organization, such agreement shall contain a clause to the effect that until expiration of four (4) years, or longer as may be required by Law, after the furnishing of such services pursuant to such subcontract, the related organization shall make available upon written request to the Secretary of the United States Department of Health and Human Services, or, upon request, to the Comptroller General of the United States Accounting Office, or any of their duly authorized representatives, a copy of such contract and such books. documents and records of such organizations as are necessary to verify the nature and extent of such costs. This Section is included pursuant to and is governed by the requirements of federal Law. No attorney-client, accountant-client, or other legal privilege will be deemed to have been walved by the parties or any of the parties' representatives by virtue of this Agreement.
- (h) <u>No Obligation to Refer Patients.</u> Nothing contained in this Agreement shall require (directly or indirectly, explicitly or implicitly) either Manager or its Affiliates or the District or its Affiliates, to refer any patients to one another or to use the Hospital or the Clinics or Other Facilities as a precondition to receiving the benefits set forth herein

6. Management Fee.

(a) <u>Management Fee</u>. As Manager's fee for the performance of the management services under this Agraement, Manager shall receive monthly (in advance on the first day of each month) a fee (the "<u>Management Fee</u>") in the amount of Sixty Five Thousand Dollars (\$65,000). Effective as of each January 1st, commencing January 1, 2017, the Management Fee shall be increased as provided in <u>Section 6(b)</u>.

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(b) CPI Adjustment.

- (i) "CPI" means the monthly index of the U.S. City Average Consumer Price index for Urban Wage Earners and Cferical Workers Medical Care Services (1982-84 equals 100) published by the United States Department of Labor. Bureau of Labor Statistics or any successor agency that shall issue such index, in the event that the CPI is discontinued for any reason, the parties shall use such other index, or comparable statistics, on the cost of medical care services in the United States, as shall be computed and published by any agency of the United States, by a responsible financial periodical of recognized authority
- (ii) Beginning on January 1, 2017, and every year thereafter, the Management Fee shall each be adjusted for inflation as follows:
 - (1) The then existing Management Fee shall be multiplied by the greater of (i) the CPI percentage increase using the latest published data since the last adjustment or (ii) five percent (5%) ("CPI increase");
 - (2) The then existing Management Fee shall then be added to the CPI increase ("Net Adjusted Management Fee"); and
 - (3) The Net Adjusted Management Fee will then be multiplied by 1.01 to determine the Management Fee for the next ensuing calendar year.
 - (4) For example, the latest published CPI in January 2017 (e.g. November 2015) will be compared to the CPI for November 2015 (assuming that was the latest available published data) and the 2016 Management Fee will be multiplied by the percentage difference. Assuming a three percent increase, the Management Fee of \$65,000 would be increased by \$1,950 for a new monthly Net Adjusted Management Fee of \$66,950. That amount would then be multiplied by 1.01 resulting in a new monthly Management Fee of \$67,619.50.
- (c) <u>Expenses</u>. In addition to the Management Fee, Manager shall be reimbursed monthly by the District for expenses expressly made reimbursable harounder together with (ii) other usual, customary, and commercially reasonable out-of-pocket expenses incurred on behalf of the District, in accordance with the approved Annual Budget, or with approval from the Governing Body. If such fees are in excess of the amount in the approved Annual Budget. Manager shall not be reimbursed for any indirect or overhead expenses of Manager or its Affiliates.
- (d) <u>Operating Expenses</u>. Except as otherwise provided in this Agreement, all of the costs and expenses of maintaining and operating the Hospital and the Other Facilities shall be the sole cost and expense of the District, and shall not be expenses of Manager. Expenses shall include, without limitation:

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- any operating or non-operating expense incurred in the provision of services to the District (unless specifically excluded hereunder); and
- (II) The cost of any employee or Consultant that provides services at or in connection with the Hospital or the Clinics or Other Facilities for improved clinic performance, such as management, billing and collections, business office consultation, accounting and legal services, including salaries, benefits, other compensation, travel costs, and other expenses.
- (e) <u>Late Payments</u>. If payment of amounts due hereunder including Management Fees, and reimbursement of other amounts, are not made on the due date, then interest shall accrue on any unpaid amounts for each day beyond the due date at the rate of ten percent (10 %) per annum (simple interest).
- (f) <u>Senior Indebtednoss Status</u>. The obligations of the District under this Agreement rank and shall rank at least senior in priority of payment to all other unsecured debt of the District. Fund transfers and other payments received by the District shall be directed, regardless of the payment purpose indicated in the payment document, according to the following priority ranking; (1) payment of the Management Fee, and other amounts due hereunder; (2) payment of any secured indebtedness; and (3) all other debts of the District.
- (g) <u>Seloff.</u> Notwithstanding any provision of this Agreement to the contrary, Manager shall have the right from time to time to seloif any amounts owed by the District to Manager against any amounts owed by Manager to the District and/or from any funds of the District over which Manager has a power of attorney or right of disbursement, whether pursuant to this Agreement or otherwise.

7. Books and Records.

- (a) <u>Maintenance of Books and Records</u>. Manager shall supervise the maintenance of the books of account covering the operation of the District. Such books of account shall be maintained on an accrual basis in accordance with GAAP.
- (b) <u>Accounting.</u> Manager shall be responsible for the oversight of Hospital and the Other Facilities' accounting functions.
- (c) Reports and Financial Statements. Manager shall from time to time deliver to the Governing Body, from the District's data, the reports and financial statements reasonably requested by the Governing Body, as well as any other reports or financial statements required by the terms of this Agreement. Oversight shall include consultation with respect to Hospital and the Other Facilities:
 - (I) General ledger / financial accounting;
 - (ii) Accounts payable;
 - (iii) Payroll;

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- (iv) Facilitation of Hospital and the Other Facilities annual audit; fees paid to independent accountants, however, shall be the responsibility of the District:
- (v) Cost reporting. Year and information required for preparation of Medicare and ModiCal cost reports shall be available to the District, and at the District's direction, to its accountants, prior to one hundred twenty (120) days into the year following the year for which they are prepared, and
- (vi) Monthly bank reconcillation

(d) Financial Statements.

- (i) Monthly financial statements, including income statements, balance sheats, statement of cash flows. Such statements shall generally be available to the District by the 20th day of the month following the applicable period
- (ii) Quarterly financial statements including unaudited financial statements reflecting the operations of the District for such quarter. Such statements shall generally be available to the District by the 45th day following the end of each applicable quarter Quarterly statements shall also include Manager's usual and customary statistical and performance measures.
- (iii) Annual financial statements, including an unaudited balance sheet of the District dated as of the end of the fiscal year and a related alignment of income or loss for the District for such fiscal year. Yearend income statements, shall be available to the District, and at the District's direction, to its accountants, prior to ninety (80) days into the year following the year for which they are prepared

(e) Audit

- (I) If the District so elects, such financial statements will be certified in the customary memor by an independent certified public accountant approved by the District. The expense of any such independent accountants shall be borne by the District.
- (II) Manager shall respond, in writing, to any and all recommendations made by the District's independent auditors, which response shall either acknowledge that an audit proposal or recommendation has been implemented or, if not, the reasons why not.
- (f) Financial Reporting Expenses. Fees paid to Independent firms and professionals in connection with the foregoing together with the direct, out-of-pocket fees, expenses and charges incurred in connection with the preparation of such shall be the District expenses.
- (g) <u>inspection of Records.</u> Authorized agents of the District shall have the right at all reasonable times during usual business hours, at the District's expense, to audit, examine and

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make copies of or extracts from the books of account of the District maintained by Manager Such right may be exercised through any agent, independent public accountant or employee of the District designated by the District.

(h) <u>Confidentiality.</u> The parties agree that: (a) neither party will disclose any secrets or confidential technology, proprietary information, or trade secrets of the other party without the prior written consent of the transmitting party, except (i) to the receiving party's agents, advisors auditors and representatives; or (ii) as may be necessary by reason of legal, accounting or regulatory requirements beyond the reasonable control of the recipient party; and (b) should this Agreement expire or terminate, neither party will take or retain any papers, records, files, computer programs and software, other documents or copies thereof, or other confidential information of any kind belonging to the other party, except for copies of same as may be reasonably necessary to defend any anticipated Rigation or respond to claims or pursuant to ordinary data backup or storage processes.

8. <u>Indemnification and Liabilities.</u>

- District Indomnity Obligation. Manager does not hereby assume any of the obligations, liabilities or debts of the District or the Hospital or the Other Facilities, except as otherwise expressly provided herein, and shall not, by virtue of its performance hereunder, assume or become flable for any of such obligations, debts or flabilities. The District hereby agrees to Indemnify, defend and hold Manager harmless from and against any and all claims, actions, liabilities, losses, costs and expenses of any nature whatsoever, including reasonable attorneys' fees and other costs of investigating and defending any such claim or action, asserted against Manager on account of any of the obligations, liabilities or debts of the District or the Hospital or the Other Facilities, except for demands srising from Manager's willful misconduct. The District further hereby agrees to defend, hold harmless and indemnify Manager and Manager Parties from and against any and all claims, actions, liabilities, losses, costs and expenses of any kind imposed on account of or erising out of actions taken by Manager or Manager Parties in what Manager or any such Person reasonably believed to be within the scope of their responsibilities under this Agreement, except for acts of willful misconduct. However, in no event shall Manager or any Manager Parties be liable to the District for any loss of use, goodwill, revenues or profits, or any consequential, special, indirect or incidental loss, demage or expense, or for punitive or exemplary damages, except for punitive or exemplary damages to the extent resulting from the willful misconduct of Manager or Manager Parties. This Section shall survive the expiration or termination of this Agreement. The foregoing indemnification is an addition to and not in fimilation of the Indemnification provisions as they relate to agents of the District (it being agreed that Manager is an agent of the District for that purpose), as set forth in the District's Bylaws, and any other Indemnification provisions set forth in this Agreement.
- (b) Manager Not Lieble for District Liabilities. The District is and shall be fully liable and legally accountable at all times to all patients and Governmental Authorities for all patient care and funds and all other aspects of the operation and maintenance of the Hospital and the Other Facilities. Manager shall have absolutely no obligation or duty to act for or on behalf of the District with respect to any matter which is not directly related to Manager's obligation to provide the administrative and management services described herein to the Hospital and the Other Facilities, as and to the extent provided herein. Manager shall not be or become fabile for any of the existing or future obligations, liabilities, or debts of the District, or for any of the obligations of the Hospital and the Other Facilities. This Section shall survive the expiration or termination of this Agreement.

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- (c) <u>Manager Not Lieble for Condition of Buildings or Equipment</u>
 Notwithstanding anything contained herein to the contrary, in no event shall Manager be liable for any demages arising from, incident to, or in connection with, the physical condition (including the anvironmental condition) of the Buildings or other structures owned or leased by the District, or the land upon which such Buildings or other structures are situated, or any of the equipment located thereon, and any such damages as may arise shall be the sale responsibility of the District, as a the District expense, except to the extent that Manager engages in willful misconduct in carrying out its responsibilities hereunder, in which event Manager's liability shall be limited to amounts not covered by applicable insurance policies. In connection with the foregoing, the District shall, with the assistance of Manager, comply with any and all applicable fire and safety codes. This Section shall survive the expiration or termination of this Agreement.
- (d) <u>Manager Not Liable for Acts or Omissions of the District's Agents</u> Manager shall not be responsible for the acts or omissions of any of the District's managers, officers, directors, Governing Body, agents, employees, contractors, subcontractors or any other Persons performing any work or rendering any services in connection with the operation, management, ownership or other use of the Hospital and the Other Facilities, or any Consultants or other Persons engaged with respect thereto. This Section shall survive the expiration or termination of this Agreement.
- (e) Manager Not Liable for Consultants' Fees and Other Financial Obligations. The District, and not Manager, shall be responsible for all less and other compensation charged by Consultants and other Persons engaged by the District (or by Manager on behalf of the District in accordance with the terms hereof) to provide services related to the Hospital and the Other Facilities. Manager shall be responsible for reviewing such fees, and the District shall timely provide Manager with copies of all bills, invoices, and other information relating to such fees.
- (I) Release. Because of the unique services to be provided by Manager hereunder, neither Manager nor any Manager Parties shell be liable to the District for any damages or loss of any kind including, without limitation: (i) direct damages; (ii) consequential damages; (iii) loss of profits; (iv) business interruption; (v) damage to property or death or injury to Persons from any cause whatsoever including, without limitation, professional liability or majoractice, acts of vandelism, loss of trade secrets or other confidential information, or (vi) damage, loss, or injury caused by a defect in the structure of the Hospital and the Other Facilities, power foilure, fire, sirkes, shortage of supplies, or any cause whatsoever in or about the Hospital and the Other Facilities or any part thereof, unless such cigims, losses, coals, damages or expenses are the result of the willful misconduct of Manager or Manager Parties. This Section shall survive the expiration or termination of this Agreement.
- (g) Menager indemnity Obligation Manager shall indemnity, detented and hold the District harmless from and against any and all claims, actions, liabilities, losses, costs and expenses of any nature whatsoever, including reasonable attorneys' face and other costs of invostigating and defending any such claim or action. Imposed on the District including its officers, directors, partners, employees and agents on account of or arising out of any breach of the terms hereof by Manager, and resulting from the willful misconduct of Manager or any Manager Parties NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT (INCLUDING ANY INDEMNIFICATION OBLIGATIONS), IN NO EVENT SHALL MANAGER BE LIABLE (WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT OR TORT OR BASED ON A WARRANTY OR OTHERWISE) FOR (I) FAILURE TO REALIZE SAVINGS OR LOSS OF PROFITS, REVENUE, OR ANY OTHER INDIRECT, INCIDENTAL PUNITIVE. SPECIAL OR CONSEQUENTIAL DAMAGES. AND (II) DIRECT AND OTHER DAMAGES IN EXCESS OF THE AMOUNT OF MANAGEMENT

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FEES EARNED BY MANAGER UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS PRIOR TO THE DATE OF THE APPLICABLE CLAIM FOR DAMAGES, IN EACH CASE, EVEN IF MANAGER HAS BEEN ADVISED OF POSSIBILITY OF SUCH DAMAGES.

n. Intentionally Omitted.

10. Default.

- (a) <u>Okstrict Default</u>. The following occurrences shall each be deemed an event of default by the District ("<u>District Default</u>"), unless waived in writing by Manager:
 - (i) Material breach of any representation, warranty, or coverant of the District contained within this Agreement, after giving written notice to the District, and the District is subsequent failure to cure the breach (if such breach is capable of being cured) within sixty (60) days (or ten (10) days in the event of a monetary breach or thirty (30) days in the event of a breach of any provision requiring the District to: (i) provide the Manager with a consent or approval or (ii) execute an agreement or document hereunder); provided, however, that if the cure cannot reasonably be effectuated within the applicable cure period, a longer period shall be allowed not to exceed ninety (90) days, if the District has commenced to cure such breach in good faith or has otherwise provided adequate protection or security to protect Manager's interest hereunder (which security shall be sufficient in Manager's sole and absolute discretion) within the applicable cure period, and the District is proceeding with due difigence to effect a cure.
 - The occurrence of any of the following: (a) the filing by the District of a voluntary petition under Chapter 9 of the Bankrupicy Code (other than any filing made within thirty (30) days after the Effective Date), or (b) the filing of a petition for the appointment of a receiver for all or any of the property of the District, or (c) the taking of any voluntary or involuntary staps to disactive or suspend the powers of the District (unless such steps to dissolve or suspend are removed) within thirty (30) days, or (d) the consent by the District to an order for relief under the Bankruptcy Code or the failure to vacate such an order for relief within sixty (60) days from and after the date of entry thereof, or (c) the entry of any order, judgment or decree, by any court of competent jurisdiction, on the application of any creditor of the District or any other Person, adjudicating the District as a bankrupt, or to be insolvent, or approving a patition seeking reorganization or the appointment of a receiver, trustee or liquidator of all or a substantial part of the District's assets, if such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days, in the event that the District files a petition under Chapter 9 of the Bankruptcy Code, the District agrees, to the extent permitted under applicable Law: (a) not to reject this Agreement; (b) to designate Manager as a vendor supplier that is critical to the District's business and obtain a critical vendor order that (x) waives or releases any preference liability; and (y) provides administrative priority or other

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preferred status, acceptable to Manager, with respect to Manager's pre-petition claims (if any), and any and all funds advanced by Manager post-filing.

(b) Liquidated damages

- (i) Each of the parties acknowledges that it would be extremely difficult and impracticable, if not impossible, for Manager to escertain with any degree of certainty the amount of damages that would be suffered by Manager in the event of the occurrence of a District Default. In the event this Agreement is terminated as a result of any District Default, the District shall pay a fee (the <u>Termination Fee</u>), which fee is not a penalty, but rather is liquidated damages in accordance with <u>California Civil</u> <u>Code</u> Section 1671, which the parties have negotiated in good faith and have agreed is a reasonable fee under the circumstances. The Termination Fee shall be peld within five (5) days after the effective date of the termination of this Agreement.
- (ii) The Termination Fee shall be an amount equal to Thirty Two Thousand Five Hundred Dollars (\$32,500) per month first increased by CPI, as provided below, and then multiplied by the remaining number of months in the Operating Period at the time of the termination, discounted to its present value using the discount rate of the Federal Reserve Bank of San Francisco at the time of termination plus one percent (1%).
 - (1) "CPI" means the monthly index of the U.S. City Average Consumer Price Index for Urban Wage Earners and Clerical Workers Medical Care Services (1982-84 equals 100) published by the United States Department of Labor, Bureau of Labor Statistics or any successor agency that shall issue such Index. In the event that the CPI is discontinued for any reason, the parties shall use such other Index, or comperable statistics, on the cost of medical care services in the United States, as shall be computed and published by any agency of the United States or, if no such index is published by any agency of the United States, by a responsible financial periodical of recognized authority.
 - (2) Inflation Adjustment. The Termination Fee shall be adjusted for inflation by multiplying the above stated Termination Fee by the CPI percentage increase between January 1, 2015 and the date the Termination Fee is payable, using the latest published data since the last adjustment.
- (iii) If the District faits to pay the Termination Fee when due, then the Termination Fee, or any unpaid portion thereof, shall bear interest

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from the date such payment was required to be made until the date of payment at the interest rate set forth in Soction 6(e).

- (iv) If upon termination of this Agreement, the District contends that the Termination Fee is not due and owing and Manager contends that same is due and owing, the District shall be obliged to deposit, within three (3) days, the amount of the Termination Fee into an Escrow account with a national bank with not less than \$50,000,000,000 in assets. The funds shall be released to the applicable party upon the aconer to occur of: (a) mutual instructions of Manager and the District; (b) final non-appealable order of a court directing the release of the funds to a party; or (c) to the District if Manager has not contested, in a judicial proceeding, that the funds are owed to it within twenty four (24) months of the termination.
- This Section shall survive the expiration or termination of this Agreement.
- (c) <u>Manager Default</u>. The following occurrences shall each be deemed an event of default by Manager ("<u>Manager Default</u>"), unless waived in writing by the District:
 - Material breach of any material coverant of Manager contained within this Agreement, after giving written notice to Manager, and Manager's subsequent failure to cure the breach within sixty (60) days; provided, however, that if the cure cannot reasonably be effectuated within such sixty (60) day period, a longer period shall be allowed, if Manager has commenced to cure such breach or has otherwise provided adequate protection or security to protect the District's interest hereunder, and Manager is proceeding to effect a cure. In determining whether a breach has occurred, the District shall exercise its reasonable discretion in good faith and shall use its best efforts to assist Manager in effectualing a cure.
 - The occurrence of any of the following: (a) the filing by Manager of a voluntary petition in bankruptcy or for reorganization under the Benkruptcy Code, or (b) the filing of a petition for the appointment of a receiver for all or any substantial portion of the proporty of Manager, or (c) the taking of any voluntary or involuntary steps to dissolve or suspend the powers of Manager (unless such steps to dissolve or suspend are removed) within sixty (60) days, or (d) the consent by Manager to an order for relief under the Bankruptcy Code or the fallure to vacate such an order for relief within sixty (60) days from and after the date of entry thereof, or (e) the entry of any order, judgment or decree, by any court of competent jurisdiction, on the application of any creditor of Manager or any other Person. adjudicating Manager as a bankrupt, or to be insolvent, or approving a petition seeking reorganization or the appointment of a receiver. trustee or liquidator of sit or a substantial part of Manager's pasets. If such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days.

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(d) Early Termination Eventa.

- (i) Notwithstanding enything herein to the contrary, Manager shall have the absolute right to terminate this Agreement, with or without "cause," upon at least thirty (30) days written notice to the District
- (ii) In the event either party should be determined by a Governmental Authority to be in violation of any Law, by virtue of this arrangement or this strangement is otherwise deemed likeget by a Court of competent jurisdiction in a final non-appealable determination ("Jeopardy Events"), the parties shall use best efforts to negotiate an amendment to this Agreement to remove or negate the Jeopardy Event, if they are unable to do so within six (6) months, either party may terminate this Agreement by written notice to the other
- (iii) In the event that the District has insufficient funds to pay the expenses of Operations, and Manager falls or refuses to fund same, if the ficensure of the Hospital is in imminent jeoperdy of being suspended or revoked because of the failure to pay the expenses of Operations, then the District may terminate this Agreement upon not less than ten (10) days written notice to Manager (during which time period Manager may avoid termination by paying the expenses in question or otherwise making arrangements with the applicable ticensing authority to avoid suspension or revocation of the Hospital's ticense).
- (iv) The District may terminate this Agreement on not less than 30 days' notice to Manager in the event that Manager is excluded, dobarred, or otherwise ineligible to participate in Federal healthcare programs as defined in 42 USC § 1320a-7b(f) or any state healthcare program.

(e) Procedure.

- (i) In the event either party to this Agreement doesns the other party to be in default of its obligations hereunder, then said party shall be required to provide notice of the alleged default to the other party which notice shall contain a detailed description of the alleged default.
- If the claim of default is disputed by the party receiving such notice. within ten (10) business days thereafter the party receiving the notice shall give notice to the charging party that the party receiving such notice disputes that the factual matters alleged constitute a default under this Agreement. If the parties cannot resolve such dispute within ten (10) business days thereafter (commencing on the date that the charging party receives notice of the dispute) the parties shall submit such matter to binding erbitration in Los Angeles County California, in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules and Procedure for Arbitration, and applying the Law of the State Any determination by the arbitrator shall be final and binding upon the parties, and judgment thereon may be entered in any court having lurisdiction thereof. The costs of arbitration shall be borne equally by the parties. During the pendency of any such arbitration and until final judgment thereon has been entered, this Agreement shall not be terminated as a result of the alleged default which is in dispute

(f) <u>Termination</u>.

(i) In the event of a party's failure to cure a default within the time allowed herein for curing such default, the non-defaulting party may immediately terminate this Agreement by notice to the defaulting party and none of the parties shall have any further obligations under this Agreement, except those obligations that by their terms or nature extend beyond the date of expiration or termination, provided, that the non-defaulting party shall have all rights and remodes available hereunder and at Law as a result of the default. It is understood that Filed 10/17/17

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in the event of any monetary default by the District which is not cured within the specified ten (10) day period. Manager may immediately terminate this Agreement by written notice to the District and may coase rendering any services hereunder to the District, all without any further liability to the District (without regard to whether Manager has advanced any funds pursuant to Section 4(IXIX1).

- (ii) The parties may mutually agree at any time to terminate this Agreement.
- (II) This Agreement shall automatically terminate if:
 - (1) The Operating Period hereunder has expired; or
 - (2) A substantial portion of the Hospital and the Other Facilities are destroyed or subject to condemnation such that the Operations are, in the sole and absolute discretion of Manager, materially impaired.
- (iv) In the event of isrmination of this Agreement, Manager shall remove itself as a signatory on the District's accounts and turn over to the District within ten (10) business days following the expiration or termination of this Agreement all business records of the District pertaining to the District. All medical records shall be maintained by the District and shall remain the property of the District.

11. Miscellangous,

- (a) <u>Complete Agreement</u>. This Agreement constitutes the entire agreement between the parties with respect to the management of the Hospital and the Other Facilities, and supersedes any and all prior agreements, either oral or written, between the parties with respect thereto.
- (b) <u>Recordation</u>. At the request of either party and at the expense of the requesting perty, the parties shall execute a short form memorandum of this Agreement which identifies this Agreement, the parties, the Operating Period, the legal description of the real property upon which the Hospital and the Other Facilities are located, and such other matters as the parties may agree. Such memorandum shall be recorded in the Office of the County Recorder of Inyo County, California, at the expense of the requesting party
- (c) <u>Binding Agreement</u>. This Agreement and the rights and obligations of the parties hereunder are binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as provided in this Section, neither party shall have the right to assign its rights or delegate its duties hareunder unless it first obtains the written consent of the other party hereto. Manager may, in its sole and absolute discretion, assign this Agreement, without the District's consent, to any Affiliate of Manager, or to any other Person which is owned and controlled by Manager or the Controlling Persons of Manager, or in connection with a Manager consolidation or sale by Manager to any Person of all or substantially all of Manager's assets or ownership interests. Nothing herein prevents Manager from subcontracting with third perties to perform any of the services required of Manager hereunder. Any assignment in violation of this Section shall be nuttled.

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- (d) <u>Governing Law.</u> This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed, and governed by and in accordance with, the Law of the State. The parties agree that the exclusive jurisdiction and venue of all actions claims or other legal proceedings arising in any manner pursuant to this Agreement, shall be vested in the Superior Court of the County of Los Angeles in the State and in no other. Notwithstanding any other provisions contained in any other document executed simultaneously herewith, each party, for itself, and all successor, assigns, heirs, executors, or future parties at interest agree and accept the jurisdiction of these courts and waive any defense or personal jurisdiction, forum non conveniens, venue or similar defenses and irrevocably agree to be bound by any judgment rendered in the aforementioned Court; exclusive of any and all other Foderal or State courts.
- (e) <u>Headings</u>. The section and subsection headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the Agreement.
- (f) Notices. Except as otherwise expressly permitted herein, all notices required or permitted to be given horsunder shall be in writing (whether or not written notice is specified herein) and shall be personally delivered, or mailed by United States mall, postage prepaid, registered or certified, return receipt requested, or sent by a nationally recognized overnight delivery service, or sent by electronic transmission system. Unless such information is changed by written notice given by the affected party, any such notices shall be sent to the following addresses:

If to Manager:
HealthCare Conglomerate Associates
Attention: Benny Benzeevi, M.D.
869 North Cherry Street
Tulare, CA 93274
Email: Benny@Healthcca.com

With a copy to:
Baker & Hosteller LLP
Altention: Bruce R. Greene, Esq.
11801 Wilshire Bivd., Suite 1400
Los Angeles, CA 90025
Ernail: BGreene@bakerisw.com

if to the District:
Southern Inyo Healthcare District
Attention: Chairman of the Board
501 E. Locust Street
Lone Pine, CA 93545
Emelt: dickfedko@gmail.com

With a copy to:
Nave & Cortell, LLP
Attention: Scott Nave, Esq.
4580 east Thousand Oaks Blvd., Suite 300
Westake Village, CA 91382
Email: snave@navecortell.com

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All notices sent by personal delivery shall be effective and deemed served upon receipt thereof All notices sent by mall shall be effective and deemed served three (3) calendar days after being deposited in the United States mail. All notices sent by overnight delivery service shall be effective and deemed served when delivered by such overnight delivery service. All notices sent by electronic transmission system shall be effective and deemed served on the day of transmission, if on a business day and during business hours (9am until 5pm, PT) or otherwise on the next business day thereafter.

- (g) <u>Survival of Representations</u> All of the representations and warranties, and those covenants and agreements contained in this Agreement which are stated to survive termination or expiration of this Agreement, shall survive the expiration or the termination, for any reason, of this Agreement. No performance or execution of this Agreement, in whole or in part, by any party hereto, no course of dealing between the parties hereto or any delay or failure on the party of any party in exercising any rights hareunder or at Law or in equity, and no investigation by any party hereto, shall operate as a waiver of rights of such party, except to the extent expressly waived in writing by such party
- (h) <u>Counterparts</u> This Agraement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Signatures transmitted by facalmile or e-mail or other digital means shall be accepted as original signatures.

(I) Severability.

- (i) Each and every provision of this Agreement is severable, and the invalidity of one or more of such provisions shall not, in any way, affect the validity of this Agreement or any other provisions hereof. If any clause or provision of this Agreement is tilegal, invalid or unenforceable, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is lilegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as aimlar in terms to such lilegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.
- (ii) The parties hereby have made all reasonable efforts to ensure this Agreement represents and memortalizes the complete and final agrooment between the parties hereto, and that it complies with all applicable Law. In the event there is a change in Law, or the interpretations thereof, whether by statute, regulation, agency or judicial decision, or otherwise, that has any material effect on any term of this Agreement, or in the event that a party's reputable counsel (being legal counsel with at least ten (10) years' experience in Hospital Law) determines that any term of this Agreement poses a material risk of violating any Law, then the applicable term(s) of this Agreement shall be subject to renegotiation and either perty may request renegotiation of the affected term or terms of this Agreement, upon written notice to the other party, to remedy such condition, in the interim, the parties shall perform their obligations hereunder in full

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compliance with applicable Law. The parties expressly recognize that upon request for renegotiation, each party has a duty and obligation to the other only to renegotiate the affected torm(s) in good faith and, further, the parties expressly agree that their consent to proposals submitted by the other party during renegotiation efforts shall not be unreasonably withheld or delayed. The parties further expressly recognize that in any such renegotiation, the relative economics to each of the parties shall be preserved. Should the parties be unable to renegotiate the term or terms so affected so as to bring lifthern into compliance with Law or the interpretation thereof within sixty (60) days of the date on which written notice of a desired renegotiation is given, then either party shall be entitled, after the expiration of said sixty (60) day period, to terminate this Agreement upon sixty (60) days' written notice to the other party, provided that such party has received an opinion of reputable legal counsel, which local counsel and colinion are reasonably acceptable to the other party, that it is more likely than not that this Agreement violetes applicable Law.

(j) <u>Cumulative Rights and Remedies</u>. Any right, power or remedy provided under this Agreement or any party hereto shall be cumulative and in addition to any other right, power or remedy provided under this Agreement or existing in Law or in equity, including, without limitation, the remedies of injunctive ratial and specific performance.

(k) Modification and Walver.

- This Agreement may only be amended by a writing signed by both parties.
- (ii) No failure by any party to insist upon strict compliance with any term of this Agreement, to exercise any option, enforce any right, or seek any remedy upon any default of any other party shall affect, or constitute a waiver of, the first party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default; nor shall any custom or practice of the parties at variance with any provision of this Agreement affect or constitute a waiver of, any party's right to demand strict compliance with all provisions of this Agreement.
- (f) Allomeys' Foss. If any action at law or in equity (or any arbitration proceeding required hereunder) is brought to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' facs and costs in addition to any other relief, as determined by the applicable court or arbitrator. The foregoing includes reasonable attorney's lees in connection with any bankruptcy proceeding (including relief from stay litigation), and in connection with any appeals.
- (m) Independent Contractor Status. Notwithstanding any provision contained herein to the contrary, Manager and the District each understand and agree that the parties hereto intend to act and perform as independent contractors. Therefore, the District is not an employee or partner of Manager. Nothing in this Agreement shall be construed as placing the District in a

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relationship of employer-employee or partners with Manager. The parties shall not have the right to make any promises, warranties or representations, or to assume or create any obligations, on behalf of the other party except as otherwise expressly provided herein or as otherwise agreed. The District and Manager agree to be solely and entirely responsible for their respective acts and for the acts of any of their respective employees and agents, except as otherwise expressly provided herein.

- (n) Ambiguities and Uncertainties. This Agreement and any ambiguities or uncertainties herein, or the documents referenced herein, shall be equally and fairly interpreted and construed without reference to the identity of the party or parties preparing this Agreement or any of the documents referred to herein, on the express understanding and agreement that the parties participated equally in the negotiation of the Agreement and the documents referred to herein, or have had equal opportunity to do so. Accordingly, the parties hereby waive the benefit of Collionity Code Section 1654 and any successor or amended statute providing that in cases of uncertainty, language or a contract should be interpreted most strongly against the party who caused the uncertainty to exist.
- (o) <u>Consents, Approvals and Discretion</u>. Except as herein expressly provided to the contrary, whenever this Agreement requires any consent or approval to be given by any party or any party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld, conditioned or delayed and such discretion shall be reasonably exercised, except as otherwise provided herein. If no response to a consent or request from Manager to the District for approval is provided to Manager within ten (10) days from the receipt by the District of the request, then the consent or approval of the District shall be deemed to have been given.
- (p) <u>Expiration of Time Periods</u>. In the event that any date specified herein is, or that any period specified herein expires on, a Saturday, a Sunday, or a State or federal holiday, then such date or the expiration date of such period, as the case may be, will be extended to the next succeeding business day. A business day is a day on which banks are required to be open for business in Los Angeles, California. All references in this Agreement to "days" are to calendar days, unless business days are so indicated.
- (q) Force Majeure. Except with respect to payment obligations, neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service deemed resulting, directly or indirectly, from acts of God. civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplios, vandatism, strikes or other work interruptions beyond the reasonable control of either party. However, both parties shall make good faith efforts to perform under this Agreement in the event of any such circumstances.
- (r) <u>No Third-Party Beneficiaries.</u> The rights, privileges, benefits, and obligations arising under or created by this Agreement are intended to apply to and shall only apply to the parties and to no other Persons, except as otherwise set forth herein.
- (a) <u>Consequential Damages</u>. Except as expressly provided herein to the contrary, neither party shall be tiable under this Agreement for consequential damages, incidental damages, indirect damages, or special damages or for loss of profit, loss of business opportunity or loss of income. Notwithstanding anything to the contrary contained in this Agreement, the parties hereto acknowledge and agree that the terms and provisions of this <u>Section 11(a)</u> shall not

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limit, after, modify, impair, or otherwise affect any of the remodies of Manager set forth in this Agreement.

- (t) <u>Limitation of Liability</u>. Notwithstanding any provision in this Agreement to the contrary, under no circumstances shall Manager or any Manager Party have any personal liability for any failure to perform any obligations erising out of or in connection with this Agreement or for any breach of the terms or conditions of this Agreement (whether written or implied). No personal judgment shall be against Manager or any Manager Party and any judgments so rendered shall not give rise to any right of execution or levy against any of their assets. Any judgments rendered against Manager shall be satisfied solely out of the assets of Manager. The foregoing provisions are not intended to relieve Manager from the performance of any of Manager's obligations under this Agreement, but only to limit the personal liability of Manager and Monager Parties in case of recovery of a judgment against any of them.
- (u) Additional Assurances. The provisions of this Agraement shall be self-operative and shall not require further agreement by the perties except as may be herein specifically provided to the contrary; provided, however, at the request of a party, the other party or parties shall execute such additional instruments and take such additional actions as the requesting party may deem necessary to effectuate this Agreement.

[Signatures on next page]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

HEALTHGARE CONGLOMERATE ASSOCIATES, LLC

By______ Name: Yoral (Benny) Benzeevi, M D. Title: Manager

SOUTHERN INYO HEALTHCARE DISTRICT

Name: Richard P. Fedchenko Title: Chairman of Board of Directors

Name: Jaque Hickman
Tile: Member of Board of Directors

Name: Mark Lacey
Title: Member of Board of Directors

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EXHIBIT A

LIST OF FACILITIES

Acute care hospital (with 4 beds), a rural healthcare clinic, and a skilled nursing facility (with 33 beds) located at 501 East Locust Street, Lone Pine, CA 93545

Extribit A

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EXHIBITA 48

Case 16-10015

EXHIBIT B

Limited Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that in accordance with the terms of that certain Management Services Agreement, dated of even date herewith. (the "Agreement"), by and among HealthCare Conglomerate Associates, LLC ("Manager") and Southern Inyo Healthcare District (the "District"), the District hereby makes, constitutes and appoints Manager as the District's true and lawful attorney-in-fact (the "Attorney-In-Fact") and in the District's name, place and stead to act in connection with any and all matters relating to any of the following and with all requisite authority and power and as legally permissible.

- 1. To bill, collect, or cause to be collected, all amounts related to the operation of the Hospital and the Other Facilities, including, but not limited to, the accounts receivable, in the District's name, and, when deemed appropriate by the Attorney-In-Fact, settle and compromise claims, and assign such other Items to a collection agency, bring a legal action or take such other appropriate action against an obligee;
- 2. To receive, take possession of, endorse in the name of the District, and deposit into the Depository Account, the Master Account or other account, as deemed appropriate by Manager in accordance with the terms of the Agreement, any notes, checks, money orders, payments insurance payments, and any other instruments received in payment of services provided at the Hospital and the Other Facilities
- 3. To deposit all amounts collected into the Depository Account, Master Account or other account, as deemed appropriate by Manager, in accordance with the terms of the Agreement
- 4. To sign checks, drafts, bank notes or other instruments on behalf of the District, and to make withdrawals from the Depository Account, Master Account or other applicable account for payments specified in this Agreement.
- 5. To execute any instruments or documents or take such other or further action necessary or appropriate in connection with any of the above.

This Power of Attorney is coupled with an interest, and shall give the Attorney-in-Fact the power and authority to act in the District's name as fully as the District could do if present. The District hereby ratifies and confirms and agrees to ratify and confirm whatsoever the Attorney-in-Fact shall do or purport to do by reason of these presents.

Capitalized terms not defined herein shall have the meaning ascribed to them by the Agreement. Any provision hereof which may prove unenforceable under any Law shall not affect the validity of any other provisions hereof.

Any photocopy of this Power of Attorney shall have the same force and effect as the original.

Exhibit B

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EXHIBITA 49

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Doc 327

Exhibit B

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EXHIBIT C

Business Associate Agreement

This Business Associate Agreement ("Agreement) is entered into on . 2016 by and between, Southern Inyo Healthcare District ('Covered Entity') and HoalthCare Conglomerate Associates, LLC ("Business Associate").

1. Definitions

A Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Date Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Hosith Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

- B. Specific definitions:
 (I) <u>Business Associate</u>. "Business Associate" shall generally have the same meaning as the term 'business associate' at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean HealthCare Conglomerato Associates, LLC a California limited Hability company
- (ii) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean Southern Inyo Healthcare District.
- (iii) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligations and Activities of Business Associate

Business Associate agrees to:

- (i) Not use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law;
- (ii) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by the Agreement,
- (iii) Report to Covered Entity any use or disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including breaches of unsecured Protected Health Information as required at 45 CFR 164.410, and any security incident of which it becomes aware:
- (iv) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintein, or transmit Protected Health Information

Exhibit C

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- on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- (v) Make available Protected Health Information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
- (vi) Make any amendment(s) to Protected Health Information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
- (vii) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164,528;
- (viii) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subport E of 45 CFR Part 164, comply with the requirements of Subport E that apply to the Covored Entity in the performance of such obligation(s); and
- (ix) Make its internal practices, books, and records evallable to the Secretary for purposes of determining compilance with the HIPAA Rules.
- 3. Permitted Uses and Disclosures by Business Associate
- (i) Business Associate may only use or disclose Protected Health Information as necessary to perform the services set forth in its billing agreement with the Covered Entity.
- (ii) Business Associate may use or disclose Protected Health Information as required by law.
- (iii) Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with Covered Entity's minimum necessary policies and procedures.
- (iv) Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.
- 4. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

5. Term and Termination

(i) <u>Term.</u> The Term of this Agreement shall be effective as of the date first above written, and shall terminate when all of the Protected Health Information provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity.

Exhibit C

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- (ii) <u>Termination for Cause.</u> Business Associate authorizes termination of this Agreement by Covered Entity. If Covered Entity determines business associate has violated a material term of the Agreement
- (iii) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, Business Associate shall return to covered entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form Business Associate shall retain no copies of the Protected Health Information.

(Iv) <u>Survival</u> The obligations of Business Associate under this Section shall survive the termination of this Agreement.

6. Miscellaneous

- (i) <u>Regulatory References</u>. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- (ii) <u>Amendment</u>. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable taw.
- (iii) <u>Interpretation</u>. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

The parties hereby execute this Agreement as authorized representatives of their respective entitles.

COVERED ENTITY	BUSINESS ASSOCIATE
Vandenkina ausananan suann 1961 a Robbble – Ansen I var v	Pagenta of North Association (Control of North Association (Contro
Southern Inya Healthcare District	HealthCare Conglomerate Associates, LLC
By Richal Replands	8
R chard P Fedchenko	By: Yorai (Benny) Benzeevi, M.D.
its: Chairmen of the Board of Directors	its: Manager

Extubil C

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EXHIBITA 53

BakerHostetler

January 2, 2016

Baker&Hostetler LLP

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Bruce R. Greene direct dial: 310.442.8834 bgreene@bakerlaw.com

Southern Inyo Healthcare District 501 East Locust Street Lone Pine, CA 93545

Attention: Chairman of the Board

HealthCare Conglomerate Associates, LLC 810 North Cherry Street Tulare, CA 93274 Attention: Benny Benzeevi, Manager

Yorai ("Benny") Benzeevi, M.D. 810 North Cherry Street Tulare, CA 93274

Re: Waiver of Conflict

Ladies and Gentlemen:

The Board of Directors of the Southern Invo Healthcare District (the "District") has requested that Baker Hostetler LLP (the "Firm") serve as its legal counsel in connection with the potential filing of a bankruptcy case under Chapter 9 of the U.S. Bankruptcy Act by the District (the "Chapter 9 Filing").

The Firm currently serves as counsel for Healthcare Conglomerate Associates, LLC ("HCCA") which is one hundred percent (100%) owned by Dr. Benny Benzeevi, and for Dr. Benzeevi personally. HCCA and Dr. Benzeevi are sometimes referred to collectively as the "Benzeevi Group."

The Firm has represented HCCA in connection with the negotiation and drafting of a management services agreement with the District.

The interests of the Benzeevi Group and the District are presently aligned with respect to the Chapter 9 Filing, and at present there are no disputes between the District and the Benzeevi Group. However, that is not to say that things may not change in the future, and it is possible that the interests of the Benzeevi Group and the District in connection with the Chapter 9 Filing may no longer be aligned, and it is also possible that disputes may occur between the District, on one hand, and the Benzeevi Group, on the other hand.

Atlanta Chicago Houston Los Angeles 096608.000007 608081379.3

Cincinnati New York Cleveland Orlando

Columbus Philadelphia Costa Mesa Denver Seattle Washington, DC January 2, 2016 Page 2

Assuming that HCCA and the District enter into the management services agreement, the Firm could be requested to represent HCCA to give advice in connection with its rights and obligations under such agreement, and could be requested to represent HCCA if a dispute arises between HCCA and the District in any way related to such agreement ("Management Agreement Matters") which Management Agreement Matters could result in litigation or other forms of dispute resolution between HCCA and the District.

The purpose of this letter is to confirm that the District and the Benzeevi Group each expressly and unconditionally waive certain conflicts of interest which may exist, or which may arise in the future, as a result of the Firm's representation of the District in the Chapter 9 Filing.

This letter confirms that:

- A. The Firm presently represents, and expects to continue to represent, the Benzeevi Group in connection with various matters unrelated to the business of the District, and also in connection with the management service agreement between the District and HCCA. The Firm may in the future represent the Benzeevi Group in connection with other matters, some of which may involve the business of the District, including but not limited to the Management Agreement Matters.
- B. The Board of Directors of the District has asked the Firm to represent the District in connection with the Chapter 9 Filing.
- C. In connection with its representation of the Benzeevi Group, the Firm has had access to confidential information of the Benzeevi Group.
- D. In connection with its representation of the District in connection with the Chapter 9 Filing, the Firm may have access to confidential information of the District.

Representation of the District in connection with the Chapter 9 Filing may place the Firm in a conflict of interest position with the Benzeevi Group under California State Bar Rules, if such conflict is not waived. The applicable Rules of Professional Conduct (the "Rules")¹ under which the Firm operates generally discourage representing two or more clients which may have differing or directly adverse interests. Further, the Rules discourage the representation of a client where, by reason of the representation of a former client, the firm has obtained material confidential information. However, the Rules recognize that there are instances in which a law firm may properly serve multiple clients having adverse interests in matters not involved in litigation. The Rules provide that a law firm may represent two or more clients that have differing or adverse current, past or future interests if each client consents to such representation after full disclosure of the actual and reasonably foreseeable adverse consequences with respect to the representation.

¹ The California Rules of Professional Conduct, specifically Rule 3-310, require that before we undertake legal representation of a client under certain circumstances, we must make certain disclosures to the client and that we obtain the client's informed written consent. These circumstances include the following:

⁽a) When we have or had a relationship with another party interested in the representation; or

⁽b) When we concurrently represent clients whose interests conflict; or

⁽c) Where we undertake representation adverse to a client where, by reason of such representation, we obtained confidential information material to that representation.

January 2, 2016 Page 3

Filed 10/15/18

The Firm's representation of the District in connection with the Chapter 9 Filing may present a conflict of interest due to the Firm's prior and continuing representation of the Benzeevi Group. The primary source of such conflict would be the fact that the Firm may have access to material confidential information of the parties which, but for the dual representation, it would be obligated to disclose to the other party. However, the Firm hereby advises you that unless otherwise required by law, it will not disclose any material confidential information of either party to the other, nor will the Firm use material confidential information of one party to the benefit of the other party. In addition, a conflict of interest would exist if a dispute arose between the District and HCCA with respect to the Management Agreement Matters and if HCCA requests that the Firm represent its interests in connection with such dispute.

With respect to the foregoing and the agreement to waive the conflicts of interest described herein, each of the District and the Benzeevi Group acknowledges the following:

- 1. The District has engaged the Firm to represent its interests in connection with the Chapter 9 Filing.
- 2. The Firm has previously represented the constituents of the Benzeevi Group in certain matters unrelated to the business of the District, and in connection with the negotiation and drafting of the Management Services Agreement, and the Firm may continue to represent the Benzeevi Group in the future, including matters in which the interests of constituents of the Benzeevi Group may be adverse to the interests of the District, including but not limited to the Management Agreement Matters.

After full disclosure of the facts and the potential adverse consequences of the dual representation as described herein, the District and the Benzeevi Group hereby waive any potential or actual conflict of interest which may now exist or which may arise in the future in connection with the Firm's accepting engagement by the District to represent the District in connection with the Chapter 9 Filing. The District expressly acknowledges and agrees that the foregoing waiver will allow the Firm to continue to represent the interests of the Benzeevi Group in other matters, including matters which are or may be adverse to the interests of the District, including but not limited to the Management Agreement Matters (including possible litigation or other forms of dispute resolution) and that the District will not seek to disqualify the Firm or any of its attorneys from representing the Benzeevi Group in any such matters (including the Management Agreement Matters) as a result of the engagement of the Firm by the District in connection with the Chapter 9 Filing.

In the event that a material dispute and actual conflict of interest arises between the District and the constituents of the Benzeevi Group regarding the Chapter 9 Filing, or otherwise, the Firm will then assess the circumstances to determine its ethical obligations and to determine an appropriate course of action, which may include withdrawing from representation of the District in the Chapter 9 Filing.

The Firm believes that representation of the District in connection with the Chapter 9 Filing, and the continued representation of the Benzeevi Group in connection with matters both related to and not related to the business of the District, will not adversely affect the Firm's current or future representation of the other party, nor will the disclosure of other material confidential information of any party be required. However, if the Firm determines that its continued representation of the District in the Chapter 9 Filing would require disclosure of

January 2, 2016 Page 4

material confidential information of the Benzeevi Group to the District, or vice versa, the Firm may elect to terminate its representation of the District in the Chapter 9 Filing. Moreover, if we are asked to represent either the District or the Benzeevi Group in any future matter which we determine may create an actual conflict of interest, we will then assess the circumstances to determine our ethical obligations and determine any appropriate course of action.

If, after reading this letter and having the opportunity to consult with independent counsel, you are each willing to waive the Firm's conflict of interest and consent to the Firm's representation of the District and the Benzeevi Group as described herein, we request that you each sign the enclosed copy of this letter in the spaces provided below and return the same to the undersigned as soon as possible. This letter may be executed in counterparts.

If you have any questions regarding anything contained herein, please feel free to call the undersigned.

Bruce R. Greene

READ, ACCEPTED AND AGREED:

SOUTHERN INYO HEALTHCARE DISTRICT

By: Richard P. Fedchenko, Chairman of the Board

HEALTHCARE CONGLOMERATE ASSOCIATES, LLC

By: Yorai (Benny) Benzeevi, M.D., Manager

by: Total (Bolling) Bollzooti, M.B., Mariagor

Yorai ("Benny") Benzeevi, M.D., Individually

BakerHostetler

January 2, 2016

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Bruce R. Greene direct dial: 310.442.8834 bgreene@bakerlaw.com

Southern Inyo Healthcare District 501 East Locust Street Lone Pine, CA 93545

Attn: Richard P. Fedchenko, Chairman of the Board of Directors

Re: Engagement of Counsel

Dear Mr. Fedchenko:

Thank you for selecting Baker & Hostetler LLP to represent Southern Inyo Healthcare District ("You" or "Your"). We look forward to serving your needs and to establishing a mutually satisfactory relationship.

The purpose of this letter is to confirm our engagement as counsel and to provide you certain information about our fees, billing and collection policies, and other terms that will govern our relationship. We believe it is helpful to explain to our clients the nature and terms of our representation at the beginning of our relationship. Accordingly, we have attached to this letter our firm's Standard Terms of Engagement (the "Engagement Letter").

You have asked us to assist you in representing you in all aspects of the Chapter 9 bankruptcy proceeding. You have not asked us to perform any other services or functions at this time. However, in the event both parties agree, in writing, to expand the scope of the engagement set forth herein, the terms of the Engagement Letter shall govern that expanded engagement.

For the purpose of checking whether there exists any conflict of interest with respect to this engagement, we have searched our conflict of interest database under the following:

Southern Inyo Healthcare District Optum Bank Siemens Financial Services LLC Siemens Diagnostics Financing Co., LLC Siemens Healthcare Diagnostics, Inc.

Atlanta Chicago Houston Los Angeles 608113670.2

Cincinnati New York Cleveland Orlando Columbus Philadelphia

Costa Mesa Denver Seattle Washington, DC

General Electric Capital Corp.
Thermo Fisher Financial Services
Healthcare Resale Group Inc.
Craneware Inc.
Leasing Associates of Barrington, Inc.
John P. Anderson
US Foods, Inc.
[other conflict searches to be run when we receive a full list of creditors]

We will assume that the above listing is accurate and complete unless you otherwise advise us. We also request that you notify us promptly if any additional searches are required because of any change in your circumstances.

If the terms described above and in the attached Standard Terms of Engagement are acceptable to you, please sign and return it to us.

Bruce R. Greene
For Baker & Hostetler LLP

Attachments:
Standard Terms of Engagement

ACCEPTED AND AGREED TO:

Southern Inyo Healthcare District

By:
Richard P. Fedchenko
Chairman of the Board of Directors

We look forward to working with you.

STANDARD TERMS OF ENGAGEMENT

Introduction

The purpose of this document is to explain our relationship with you, our billing practices, our obligations to you, and your obligations to us in the belief that our relationship will benefit from a mutual understanding of these matters at the beginning of our relationship. We urge you to call us anytime you have a question relating to any of these matters. We strive to have satisfied clients and your satisfaction is very important to us.

Your agreement to this engagement constitutes your acceptance of the following terms and conditions. If you find any of these terms and conditions unacceptable, please tell us now so that we can try to resolve any differences and proceed on a mutually satisfactory basis.

Our Relationship

Our engagement and the legal services we will provide are limited to the matter described in the accompanying letter. Any change in our engagement or the legal services we are to provide to you must be mutually approved in writing. The services we provide are strictly legal services; we do not provide business, personal, financial, investment, accounting or other services. You will provide us with the factual information and materials we need to perform the legal services identified in the accompanying letter, and we will perform the necessary legal services and give you the necessary legal advice. You will make all business, personal, financial, investment, or accounting decisions that are required, including in the case of litigation, the decision whether or not to settle the case. You will not rely on us for business, personal, financial, investment, or accounting advice and will not expect us to investigate the character or credit of persons or entities with whom you are dealing, unless we have expressly agreed to do so in the accompanying letter.

Confidentiality and Other Matters

As your attorneys, we owe you duties of confidentiality, loyalty, and competent and zealous representation. We are required to preserve your confidences and secrets. This obligation and the attorney-client communication privilege exist in order to facilitate and encourage candid communication between a client and his or her attorney. We can adequately represent you and give you sound legal advice only if you make us aware of all information and documents that might be relevant to the matter we are undertaking for you. Accordingly, we urge you to communicate with us fully and without reservation so that we can properly perform legal services for you and give you legal advice with respect to the matter on which you have engaged us.

You should understand, however, that in those matters where we are representing a corporation or other legal entity, our attorney-client relationship is with that specific corporation or legal entity and not with its individual officers, directors, executives, employees, shareholders, partners, or other persons in similar positions, or with its parent, subsidiary, or affiliated corporations or persons. In such cases, our professional

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duties are owed only to the corporation or legal entity that we have agreed to represent, and you will not assert a conflict of interest because we represent other persons, corporations, or entities that are adverse to any of such related persons, corporations, or other legal entities. In some situations where there is no conflict of interest, we may represent individual officers, directors, executives, or employees, or parent, subsidiary, or affiliated corporations of a corporation or other legal entity as well as the corporation or other legal entity but such multiple representations will be clearly stated in the accompanying letter.

Professional Fees

In determining the professional fee for our legal services we are generally guided primarily by the amount of time devoted to your matter and the hourly rates of the attorneys performing the services, although we offer other fee arrangements in appropriate situations. If another fee arrangement has been mutually agreed to for your work, it will be set forth in the accompanying letter.

We may also consider other factors, as appropriate, including: the novelty and difficulty of the legal issues involved; the legal skill required to do the work; the fee customarily charged by comparable law firms for similar legal services; the importance of the work to you or the amount of money involved or at risk and the results obtained; any time constraints imposed by you or the circumstances; and the nature and length of our professional relationship with you.

The hourly rate assigned to each attorney reflects his or her ability, experience, reputation, market rates in each location for his or her area of practice, the firm's costs, and other factors deemed appropriate by the firm. Our hourly rates are subject to review and adjustment from time to time, at least annually, based on the foregoing factors. Any changes in hourly rates are usually applied prospectively, although they may also be applied to time that has been recorded but not yet billed. Effective January 1, 2016, Ashley McDow's hourly rate is \$550, my hourly rate is \$730 and our associates' hourly rates are \$380. We will provide you with notice of any changes to our rates or expense charges, either through correspondence or invoices indicating the rates then in effect. Our attorneys and other personnel will record time spent on your behalf in quarter-hour increments unless otherwise agreed between you and us.

We will seek to perform your work cost efficiently. This does not mean, however, that we will necessarily assign an attorney with the lowest hourly rate. When selecting attorneys to perform legal services required by your engagement, we generally consider the skill, ability, and experience levels required for the work, prior commitments of our attorneys, and the time demands of your matter and other matters, as well as the hourly rates of our attorneys, unless you request otherwise. Under some circumstances, attorneys with higher hourly rates may be assigned in order to provide specialized legal skills, to complete the matter more quickly, to meet time constraints imposed by you or the circumstances, to seek to perform the work at a lower overall professional fee, or because of attorney workloads.

At times we may use temporary personnel with appropriate credentials to complete certain work under our supervision. We will charge you for the time of these individuals

at rates established by us based on their experience and expertise the same as we do for our direct employees.

We generally charge for travel time during normal business hours at our applicable hourly rates. Outside normal business hours we charge one-half our applicable hourly rates unless the attorney or other person is able to work while traveling. If the attorney or other person works on your behalf while traveling, you will be charged our applicable hourly rates regardless of the time of travel. If the attorney or other person works on other clients' matters while traveling, you will not be charged for time during which the attorney or other person worked for other clients.

Taxes

The fees for services do not include any excise, sales, use, value added or other taxes, tariffs or duties that may be applicable to our services. When we have the legal obligation to collect such taxes, tariffs or duties, the amount of such taxes, tariffs and duties will be included on our statements with other expenses and charges unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. Any payments by you to us will be made free and clear of, and without reduction for, any withholding taxes. Any such taxes that are otherwise imposed on payments to us will be your sole responsibility. You may be asked to provide us with official receipts issued by the appropriate taxing authority or such other evidence to establish that such taxes have been paid.

Expenses and Other Charges

In addition to fees for our professional services, our statements will include out-of-pocket expenses we incur (e.g., filing fees, court reporter fees, expert witness fees, overnight courier fees, travel, and postage) and internal charges we make for other services we provide (e.g., copying, computerized legal research, long distance telephone, and faxes) in connection with performing legal services on your behalf. Out-of pocket expenses incurred will be billed at our cost, which in some cases may be estimated. Internal charges (which may exceed direct costs and allocated overhead expense) will be billed at amounts that reflect the value of the service or industry practice. Further detail regarding any expenses or other charges will be furnished upon request. We may request an advance expense deposit from you in matters where we expect that we will be required to incur substantial out-of-pocket costs on your behalf.

Travel Expenses. For automobile travel, we customarily reimburse our attorneys and other personnel and charge you the Internal Revenue Service approved mileage rate, plus parking and tolls outside the cities in which our offices are located.

Actual cost is always charged for airfare, auto rental, cab fare, meals, and lodging. Our attorneys and other personnel are required to travel coach class, lowest logical airfare, unless you request or approve other arrangements in advance, the air travel time exceeds four hours, or circumstances warrant otherwise. In the latter two cases, travel will be by business class if available or first class if it is not.

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Delivery and Communications Expenses. Postage on mail in excess of two ounces per item is billed at cost.

Air express, outside local messenger services and courier services are billed at cost. Use of our own messengers for local deliveries is charged at rates generally competitive with local messenger services.

Long-distance telephone calls are charged at costs estimated using rate tables provided by our primary vendors. Local mobile phone calls to or from clients are billed at cost, exclusive of phone rental and lease costs, which are absorbed by the caller.

Computerized Research and Database Charges. We utilize Lexis-Nexis and Westlaw to provide primary automated research services that assist in reducing your professional fees. In addition, we have access to other internal and external databases, which help to save money and assist in improving the quality of legal research. Our charges for use of these automated research tools are at vendor invoice, which is net of all discounts provided by the vendors.

Photocopying and Fax Charges. Copying is charged at \$.10 per page for black & white and \$.50 for color. Outgoing faxes are charged at \$1.00 per page within the United States and \$2.50 per page internationally. There is no charge for incoming faxes or for long distance phone charges associated with fax transmission.

Invoices and Payments

Unless otherwise mutually agreed, we generally render monthly invoices for legal services, expenses and other charges. Our invoices are due and payable upon receipt. Payment is considered overdue if not received within 21 days from the invoice date. If our invoices are not timely paid, we may withdraw from your representation and terminate our services. We may also assess an interest charge on any overdue invoices, whether or not we terminate services. Payments made on overdue invoices are applied first to the oldest outstanding invoice.

If you have any question about any invoice or any fee, expense, or other charge, we urge you to discuss it with us. We want you to be satisfied with the quality of our services and the reasonableness of our fees.

Termination

Unless we have mutually agreed to continue our attorney-client relationship with respect to other matters, our attorney-client relationship with you will end upon the completion of services for the matter to which the accompanying letter applies or upon the earlier termination of our engagement by you or by us. In this regard, you have the right to terminate our attorney-client relationship at any time you wish with or without cause. An early termination of our relationship without cause will not, and an early termination of our relationship with cause may not, relieve you of your obligation to pay our reasonable fees, expenses, and other charges incurred before the termination. We also have the right, and sometimes the obligation, to terminate the engagement subject to the ethical standards in the Rules of Professional Conduct. We also reserve the right

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to suspend or terminate our representation, subject to such ethical standards, if you breach your obligations with respect to the engagement or do not pay the firm's invoices as specified.

Ownership of Files and Records

Except as to records which belong to the firm, records or files which we receive from you and documents that are produced or created in connection with your representation, shall be your property, subject to any lien granted by law, rules of professional conduct and our right to make and retain copies. Upon the closing of our files after termination of the engagement, we will return records belonging to you unless you request otherwise, or unless special circumstances require us to retain such records. If you request that we retain your files we may ask that you bear the costs of storage. We shall require from you written authorization to transfer any property belonging to you to a third party. Under our record retention policy we normally destroy files ten years after a matter is closed. It is understood and agreed that we shall have the right, at our discretion, to dispose of files which have not been returned to you at such time that we determine that such files need no longer be retained.

64 EXHIBIT C

BakerHostetler

July 19, 2017

Bakera Hostetler LLP

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Bruce R. Greene direct dial: 310.442.8834 hgreene@bakerlaw.com

Southern Inyo Healthcare District 501 East Locust Street Lone Pine, CA 93545 Attention: Chairman of the Board

Yorai ("Benny") Benzeevi, M.D. 810 North Cherry Street Tulare, CA 93274

HealthCare Conglomerate Associates, LLC 810 North Cherry Street
Tulare, CA 93274
Attention: Benny Benzeevi, Manager

Vi Healthcare Finance, Inc. 4924 West Lakewood Drive Visalia, CA 93291 Attention: Benny Benzeevi, President

Re: Waiver of Conflict

The Board of Directors of the Southern Inyo Healthcare District (the "District") previously engaged Baker Hostetler LLP (the "Firm") to serve as its legal counsel in connection with the filing of a bankruptcy case under Chapter 9 of the U.S. Bankruptcy Act by the District (the "Chapter 9 Filing").

The Firm currently serves as counsel for HealthCare Conglomerate Associates, LLC ("HCCA"), which is one hundred percent (100%) owned by Dr. Benny Benzeevi, for Vi Healthcare Finance, Inc. ("Vi") which is also 100% owned by Dr. Benny Benzeevi, and for Dr. Benzeevi personally. HCCA, Vi and Dr. Benzeevi are sometimes referred to collectively as the "Benzeevi Group."

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC 096608.000007 611073188.1 RTM

Southern Inyo Healthcare District Yorai ("Benny") Benzeevi, M.D. Vi Healthcare Finance, Inc. July 19, 2017 Page 2

The Firm has represented HCCA in connection with the negotiation and drafting of a Management Services Agreement with the District.

The Firm may be representing Vi in connection with a potential loan to be made by Vi to the District (the "Loan").

The interests of the Benzeevi Group and the District are presently aligned with respect to the Chapter 9 Filing, and at present there are no disputes between the District and the Benzeevi Group. However, that is not to say that things may not change in the future, and it is possible that the interests of the Benzeevi Group and the District in connection with the Chapter 9 Filing may no longer be aligned, and it is also possible that disputes may occur between the District, on one hand, and the Benzeevi Group, on the other hand.

For example, the Firm could be requested to represent HCCA to give advice in connection with its rights and obligations under the Management Services Agreement, and could be requested to represent HCCA if a dispute arises between HCCA and the District in any way related to such agreement ("Management Agreement Matters") which Management Agreement Matters could result in litigation or other forms of dispute resolution between HCCA and the District.

As another example, assuming that Vi extends the Loan to the District, the Firm could be requested to represent Vi to give advice in connection with its rights and obligations under the loan documents and could be requested to represent Vi if a dispute arises between Vi and the District in any way related to the Loan ("Loan Matters"), which Loan Matters could result in litigation or other forms of dispute resolution between Vi and the District.

The purpose of this letter is to confirm that the District and the Benzeevi Group each expressly and unconditionally waive certain conflicts of interest which may exist, or which may arise in the future, as a result of the Firm's representation of the District in the Chapter 9 Filing and the Firm's prior and future representation of the Benzeevi Group.

This letter confirms that:

- A. The Firm presently represents, and expects to continue to represent, the Benzeevi Group in connection with various matters unrelated to the business of the District, and in connection with the Management Service Agreement between the District and HCCA, and also potentially in connection with the Loan between Vi and the District. The Firm may in the future represent the Benzeevi Group in connection with other matters, some of which may involve the business of the District, including but not limited to the Management Agreement Matters and the Loan Matters.
- B. The Board of Directors of the District has engaged the Firm to represent the District in connection with the Chapter 9 Filing.

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Southern Inyo Healthcare District Yorai ("Benny") Benzeevi, M.D. Vi Healthcare Finance, Inc. July 19, 2017 Page 3

- C. In connection with its representation of the Benzeevi Group, the Firm has had access to confidential information of the Benzeevi Group.
- D. In connection with its representation of the District in connection with the Chapter 9 Filing, the Firm may have access to confidential information of the District.

Representation of the District in connection with the Chapter 9 Filing may place the Firm in a conflict of interest position with the Benzeevi Group under California State Bar Rules, if such conflict is not waived. The applicable Rules of Professional Conduct (the "Rules") under which the Firm operates generally discourage representing two or more clients which may have differing or directly adverse interests. Further, the Rules discourage the representation of a client where, by reason of the representation of a former client, the firm has obtained material confidential information. However, the Rules recognize that there are instances in which a law firm may properly serve multiple clients having adverse interests in matters not involved in litigation. The Rules provide that a law firm may represent two or more clients that have differing or adverse current, past or future interests if each client consents to such representation after full disclosure of the actual and reasonably foreseeable adverse consequences with respect to the representation.

The Firm's representation of the District in connection with the Chapter 9 Filing may present a conflict of interest due to the Firm's prior and continuing representation of the Benzeevi Group. The primary source of such conflict would be the fact that the Firm may have access to material confidential information of the parties which, but for the dual representation, it would be obligated to disclose to the other party. However, the Firm hereby advises you that unless otherwise required by law, it will not disclose any material confidential information of either party to the other, nor will the Firm use material confidential information of one party to the benefit of the other party. In addition, a conflict of interest would exist if a dispute arose between the District and HCCA with respect to the Management Agreement Matters or between the District and Vi with respect to the Loan Matters, and if HCCA or Vi requests that the Firm represent its interests in connection with such dispute.

With respect to the foregoing and the agreement to waive the conflicts of interest described herein, each of the District and the Benzeevi Group acknowledges the following:

096608.000007 611073188.1

or

RA M

¹ The California Rules of Professional Conduct, specifically Rule 3-310, require that before we undertake legal representation of a client under certain circumstances, we must make certain disclosures to the client and that we obtain the client's informed written consent. These circumstances include the following:

⁽a) When we have or had a relationship with another party interested in the representation;

⁽b) When we concurrently represent clients whose interests conflict; or

⁽c) Where we undertake representation adverse to a client where, by reason of such representation, we obtained confidential information material to that representation.

Southern Inyo Healthcare District Yorai ("Benny") Benzeevi, M.D. Vi Healthcare Finance, Inc. July 19, 2017 Page 4

- 1. The District has engaged the Firm to represent its interests in connection with the Chapter 9 Filing.
- 2. The Firm has previously represented the constituents of the Benzeevi Group in certain matters unrelated to the business of the District, and potentially in connection with the negotiation and drafting of the Management Services Agreement, and in connection with the negotiation of the Loan, and the Firm may continue to represent the Benzeevi Group in the future, including matters in which the interests of constituents of the Benzeevi Group may be adverse to the interests of the District, including but not limited to the Management Agreement Matters and the Loan Matters.

After full disclosure of the facts and the potential adverse consequences of the dual representation as described herein, the District and the Benzeevi Group hereby waive any potential or actual conflict of interest which may now exist or which may arise in the future in connection with the Firm's engagement by the District to represent the District in connection with the Chapter 9 Filing. The District expressly acknowledges and agrees that the foregoing waiver will allow the Firm to continue to represent the interests of the Benzeevi Group in other matters, including matters which are or may be adverse to the interests of the District, including but not limited to the Management Agreement Matters and the Loan Matters (including possible litigation or other forms of dispute resolution) and that the District will not seek to disqualify the Firm or any of its attorneys from representing the Benzeevi Group in any such matters (including the Management Agreement Matters and the Loan Matters) as a result of the engagement of the Firm by the District in connection with the Chapter 9 Filing.

In the event that a material dispute and actual conflict of interest arises between the District and the constituents of the Benzeevi Group regarding the Chapter 9 Filing, or otherwise, the Firm will then assess the circumstances to determine its ethical obligations and to determine an appropriate course of action, which may include withdrawing from representation of the District in the Chapter 9 Filing.

The Firm believes that representation of the District in connection with the Chapter 9 Filing, and the continued representation of the Benzeevi Group in connection with matters both related to and not related to the business of the District, will not adversely affect the Firm's current or future representation of the other party, nor will the disclosure of other material confidential information of any party be required. However, if the Firm determines that its continued representation of the District in the Chapter 9 Filing would require disclosure of material confidential information of the Benzeevi Group to the District, or vice versa, the Firm may elect to terminate its representation of the District in the Chapter 9 Filing. Moreover, if we are asked to represent either the District or the Benzeevi Group in any future matter which we determine may create an actual conflict of interest, we will then assess the circumstances to determine our ethical obligations and determine any appropriate course of action.

096608.000007 611073188.1

RAPA

Southern Inyo Healthcare District Yorai ("Benny") Benzeevi, M.D. Vi Healthcare Finance, Inc. July 19, 2017 Page 5

If, after reading this letter and having the opportunity to consult with independent counsel, you are each willing to waive the Firm's conflict of interest and consent to the Firm's representation of the District and the Benzeevi Group as described herein, we request that you each sign the enclosed copy of this letter in the spaces provided below and return the same to the undersigned as soon as possible. This letter may be executed in counterparts.

This letter is given in addition to and not in substitution of the "waiver of conflict" letter dated January 2, 2016 between the District and the Benzeevi Group, which remains in force and effect.

If you have any questions regarding anything contained herein, please feel free to call the undersigned.

Bruce M. Greene

READ, ACCEPTED AND AGREED:

SOUTHERN INYO HEALTHCARE DISTRICT

By:

Richard P. Fedchenko, Chairman of the Board

HEALTHCARE CONGLOMERATE ASSOCIATES, LLC

By:

Yorai (Benny) Benzeevi, M.D., Manager

Vi FINANCE, INC.

By:

Yorai (Benny) Benzeevi, President

Yorai (Benny) Benzeevi, M.D., individually

096608.000007 611073188.1

Filed 10/15/18 Case 16-10015 Doc 490

BakerHostetler

Baker&Hostetler LLP

11601 Wilshire Boulevard Suite 1400 Los Angeles, CA 90025-0509

T 310.820.8800 F 310.820.8859 www.bakerlaw.com

Bruce R. Greene direct dial: 310.442.8834 bgreene@bakerlaw.com

September 29, 2017

VIA EMAIL (BBENZEEVI@MAC.COM) AND FIRST CLASS MAIL

Benny Benzeevi, M.D. 4924 West Lakewood Drive Visalia, CA 93291

Healthcare Conglomerate Associates, LLC c/o Benny Benzeevi, M.D. 4924 West Lakewood Drive Visalia, CA 93291

Re: Termination of Representation

Dear Benny:

This letter shall serve as notice that the Baker Hostetler firm has determined that we must commence termination of our representation of you personally as well as our representation of HCCA, and all entities affiliated with you and HCCA (collectively, "You and HCCA").

Commencing today, we will no longer undertake any new legal matters for You and HCCA. As you know, we are counsel of record for you in the *Kumar v. Betre* matter, which is now on appeal. Although there is no imminent work to be done in that case, we do need to substitute out as your counsel. Please advise which firm will substitute in our place, and we will send a substitution-of-attorney form. Until we are substituted out as your counsel, we will continue to represent your interests in that case.

We will prepare a memorandum of any pressing matters relating to our representation as soon as possible. Please advise us of any new counsel You and HCCA have retained and, upon your request, we will deliver your files to new counsel. Alternatively, we will deliver your files to you if you wish. Of course, we will cooperate with new counsel as you direct.

Atlanta Chicago Houston Los Angeles 096608.000007 611382803.1

Cincinnati New York Cleveland Orlando Columbus Philadelphia Costa Mesa Denver Seattle Washington, DC Benny Benzeevi, M.D. Healthcare Conglomerate Associates, LLC September 29, 2017 Page 2

Finally, we again request that you settle your outstanding accounts with the firm forthwith. A current statement is attached.

Bruge R. Greene

BakerHostetler

STATEMENT OF ACCOUNT as of 09/29/2017

File Number 07110 / 096608 F.E.I. Number: 34-0082025

Healthcare Conglomerate Associates, LLC 4924 W. Lakewood Dr. Visalia, CA 93291-9046

Invoice	Invoice	Invoice	Invoice	Payment	Payments/	
Number	Date	Due Date	Amount	Date	Adjustments*	Balance
50408487	08/09/17	09/08/17	10,951.50			\$6,962.39
				09/20/17	(2,906.11)	
				09/28/17	(1,083.00)	
50416431	09/07/17	10/07/17	53.50			\$53.50
50416432	09/07/17	10/07/17	817.00			\$817.00
					Balance Due	\$7.832.89

Current	1 - 30 Days	31 - 60 Days	61 - 90 Days	91 - 180 Days	Over 180 Days
870.50	6,962.39	0.00	0.00	0.00	0.00

PLEASE REMIT TO:

Baker & Hostetler LLP P.O. Box 70189 Cleveland, OH 44190-0189 FOR WIRE REMITTANCES:

Baker & Hostetler LLP KeyBank, N.A., Cleveland, OH Account No: 1001516552 / ABA 041001039

SWIFT Code: KEYBUS33

FOR QUESTIONS:

Bernadette O'Neill <u>Boneill@bakerlaw.com</u> Phone: (310) 979-8470 Fax: (310) 820-8859 Filed 10/15/18 Case 16-10015 Doc 490

From: Greene, Bruce R.

Sent: Tuesday, August 8, 2017 1:21 PM PDT

CC: benny@healthcca.com; Linda Wilbourn (linda.wilbourn@comcast.net); Richard Torrez (tacboxing@gmail.com)

To: Kevin Northcraft (northee@aol.com); Mike Jamaica (mikejamaica@sbcglobal.net); senovia@live.com

CC: benny@healthcca.com; Linda Wilbourn (linda.wilbourn@comcast.net); Richard Torrez (tacboxing@gmail.com)

Subject: TRMC Purported Board Meeting

Attachments: aug 9 2017 agenda final.docx

Importance: High

Mr. Northcraft and Mr. Jamaica – we have been advised that you have created the attached "agenda", calling for a Special Meeting of the Board of TRMC for tomorrow, and likely have posted or distributed the "agenda" in some manner.

As I have repeated informed you, you have no authority to call for Board meetings without three legitimate Board members doing so, and Ms. Gutierrez is still not a legitimate Board member. You can obviously meet as often as you want and with whomever you want, but none of these meetings are lawful meetings of the Board of TRMC, and no actions taken at these meetings will have any legal force or effect unless a quorum is present (which does not mean you two and Ms. Guttierez).

Moreover, any law firm that the three of you may have selected at any of these meetings will not be considered to lawfully represent the District. You are well aware of the blatant conflict of interest that the McCormick, Barstow firm has (which even they have acknowledged), and you are also aware that neither Ms. Wilbourn nor Mr. Torrez have signed a conflict waiver, nor will they do so.

73

This "agenda" will not be posted to the District's website.

Bruce Greene

Partner

BakerHostetler

11601 Wilshire Boulevard | Suite 1400 Los Angeles, CA 90025-0509 T +1.310.442.8834 M +1.310.308.1003

bgreene@bakerlaw.com

bakerlaw.com



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EXHIBIT F

Any tax advice in this email is for information purposes only. The content of this email is limited to the matters specifically addressed herein and may not contain a full description of all relevant facts or a complete analysis of all relevant issues or authorities.

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74 EXHIBIT F

CTS Reporting, Inc.

REPORTER'S TRANSCRIPT OF RECORDED PROCEEDINGS

IN RE: SOUTHERN INYO HEALTHCARE DISTRICT

DATE: OCTOBER 17, 2017



cts-reporting.com

EXHIBIT G

1	UNITED STATES BANKRUPTCY COURT
2.	EASTERN DISTRICT OF CALIFORNIA
3	FRESNO DIVISION
4	000 CERTIFIED COPY
5	
6	IN RE SOUTHERN INYO HEALTHCARE DISTRICT, NO. 16-10015
7	DEBTOR.
8	
9	
10	
11	
12	
13	REPORTER'S TRANSCRIPT OF RECORDED PROCEEDINGS
14	BEFORE: HON. FREDERICK E. CLEMENT UNITED STATES BANKRUPTCY COURT
15	2500 TULARE STREET, 5TH FLOOR FRESNO, CALIFORNIA
16	
17	TUESDAY, OCTOBER 17, 2017 RECORDING TIME: 2:34 P.M 3:12 P.M.
18	
19	
20	
21	
22	
23	TRANSCRIBED BY:
24	SALLY ANNA FRITS CA CSR CERTIFICATE NO. 11709
25	OUR FILE NO. 2924

```
1
     APPEARANCES OF COUNSEL:
 2
     FOR DEBTOR SOUTHERN INYO HEALTHCARE DISTRICT:
 3
           (APPEARING TELEPHONICALLY)
          BAKER & HOSTETLER, LLP
 4
          BY: ASHLEY M. McDOW
                ATTORNEY AT LAW
 5
          11601 WILSHIRE BOULEVARD
          SUITE NO. 1400
 6
          LOS ANGELES, CALIFORNIA 90025
          (310) 820-8800
 7
     FOR CREDITOR OPTUM BANK, INC.:
 8
           (APPEARING TELEPHONICALLY)
 9
          SHIPMAN & GOODWIN, LLP
               ERIC S. GOLDSTEIN
10
                ATTORNEY AT LAW
          1 CONSTITUTION PLAZA
11
          HARTFORD, CONNECTICUT 06103
          (860) 251-5000
12
     FOR CREDITOR GE HFS, LLC:
13
          (APPEARING TELEPHONICALLY)
14
          KUTAK ROCK, LLP
          BY: LISA M. PETERS
15
               ATTORNEY AT LAW
          1650 FARNAM STREET
          OMAHA, NEBRASKA 68102
16
          (402) 346-6000
17
     FOR CREDITOR BETA RISK MANAGEMENT AUTHORITY:
18
          (APPEARING TELEPHONICALLY)
          PYLE, SIMS, DUNCAN & STEVENSON
19
               GERALD N. SIMS
20
               ATTORNEY AT LAW
          401 B STREET
21
          SUITE NO. 1500
          SAN DIEGO, CALIFORNIA 92101
          (619) 687-5200
22
     ALSO PRESENT: ROBIN S. TUBESING
23
24
                               -- 000 --
25
```

1	FRESNO, CALIFORNIA, TUESDAY, OCTOBER 17, 2017
2	2:34 P.M.
3	000
4	
5	THE COURT: Good afternoon and be seated, please. We
6	are on the record in the matter in a special setting of
7	In re Southern Inyo Healthcare. This is 16-10015. And
8	this is a hearing pursuant to a very short order-shortening
9	time that was filed some three hours ago. I'm going to
10	take the appearances, starting with those in the courtroom
11	first, please.
12	Are you making an appearance, Ms. Tubesing?
13	MS. TUBESING: Your Honor, I'm just monitoring.
14	THE COURT: Okay. The record to reflect that
15	Ms. Tubesing present is monitoring. I'll take those on the
16	phone, starting with counsel for the debtor.
17	MS. McDOW: Good afternoon, your Honor. This is
18	Ashley McDow, Baker Hostetler, on behalf of the debtor,
19	Southern Inyo Healthcare District.
20	THE COURT: Good afternoon. Are there other
21	appearances on the phone?
22	MR. GOLDSTEIN: Your Honor, this is Eric Goldstein on
23	behalf of Optum Bank.
24	THE COURT: Good afternoon. I believe we may have
25	some other phone appearances, either a Jed Crookston, Lisa

1	Peters, or Gerald Sims, perhaps.
2	MR. GOLDSTEIN: Your Honor, this is Eric Goldstein.
3	Mr. Crookston is my client representative from Optum Bank.
4	He's on a listen-only line.
5	THE COURT: Okay.
6	MR. SIMS: Good afternoon, your Honor. Gerald Sims on
7	behalf of BETA Healthcare.
8	THE COURT: Good afternoon. Is Lisa Peters present?
9	MS. PETERS: Good afternoon, your Honor. Lisa Peters
10	with Kutak Rock on behalf of GE HFS, LLC.
11	THE COURT: Good afternoon.
12	Here's where we are on this: This is an
13	emergency motion for a rejection of a purported executory
14	contract with HCCA. I had given some orders with respect
15	to notification of the parties as to this order-shortening
16	time. We have not yet received a certificate of service
17	from debtor's counsel. I believe it is a Mr. Delaney has
18	spoken with my judicial assistant and tells her that she
19	that he is attempting to upload the certificate of service,
20	but is apparently experiencing technical difficulties. We
21	are now some almost 40 minutes late, and I do apologize to
22	the parties for that but I do feel that I do need to see

that certificate of service, at least indicating that the

shortened notice was given. And so far we have not yet

23

24

25

received that.

```
Ms. McDow, I'm looking for some direction from
 1
           I'm pleased to hear this today, insofar as we're
 2
     vou.
     able, but I do feel it is important that I at least see
 3
     that on a preliminary basis before we move forward. Are
 4
     you able to offer any thoughts as to how long it's going to
 5
     take you to get that done? I understand your office has
 6
 7
     been experiencing, at least from the call, that --
          MS. McDOW: Your Honor, I understand that it was filed
 8
 9
     about -- about five minutes ago. It was -- and it's my
10
     apologies.
                 My assistant, who has my log-in, is out to
     lunch. So it was -- it was -- and Mr. Delaney's account
11
     was frozen. So I believe my other associate, Mr. Farbar, I
12
13
     have a ping from him four minutes ago, I guess, saying that
     it has been filed. So I assume it's just a temporary lag,
14
15
     so I'm hoping that it will upload to your Honor's system
16
     any second.
17
                      Well, let me ask my deputy if she is able
          THE COURT:
18
     to see.
              She can see things very early when they are
19
     uploaded.
20
                      I do not see it in the inbox yet, your
          THE CLERK:
21
     Honor.
22
          THE COURT:
                      Okay. And your system has been refreshed,
23
     so were it there, you would see it?
24
                      I just went to another area, and it looks
          THE CLERK:
25
     like I --
```

	,
1	THE COURT: We may have located it.
2	THE CLERK: Your Honor, this is not from the official
3	inbox. This is from a different area.
4	THE COURT: Understood. This has not yet been filed,
5	but I am looking at a declaration from Michael T. Delaney,
6	and it does appear, at least on a preliminary basis, to
7	satisfy the terms of my order on the order-shortening time.
8	Ms. McDow, I will turn to you first. I have read
9	the moving papers. I am inclined to give the least
10	possible relief today that affords your client protection,
11	and that is allowing the removal of names from bank
12	accounts as suggested in the fourth paragraph, the
13	order-shortening time. So to change the signatory
14	authorizations and such other relief as possible, but then
15	continuing this and allowing for some further allowing
16	HCCA to be heard. I note that they're not here today.
17	MS. McDOW: They are not, your Honor. And I
18	appreciate that. I appreciate the relief already granted,
19	and the Court's indulgence, as far as the timing and the
20	emergency motion.
21	To start, we did get an e-mail from Mr. Levinson
22	at Orrick with respect to his representation or not, and he
23	wanted me to make it clear to the Court that neither he nor
24	Mr. Bedoyan, who he copied with his e-mail so I assume

-- he did not say anything to the contrary, but

1	Mr. Levinson wanted me to convey to the Court that he does
2	not he nor Orrick represents HCCA in this matter and
3	neither does Mr. Bedoyan. So and he wanted me to convey
4	that to the Court. So we will we will serve them.
5	Again, I don't I don't have any understanding who their
6	counsel is in this matter, if anyone yet, but we will serve
7	them.
8	THE COURT: Well
9	MR. McDOW: And, again, we appreciate the indulgence
10	with respect to the bank accounts.
11	To add a little bit of color and some more
12	THE COURT: Ms. McDow
13	MS. McDOW: Yes, your Honor.
14	THE COURT: Before you do that, with that said, I'm
15	looking at the declaration of Mr. Delaney, and point me to
16	the portion that indicates that HCCA was given notice of
17	this hearing. I added Mr. Levinson and Mr. Bedoyan as
18	attorneys to be served, not because I was certain they
19	represented them in this case, but because they did
20	represent them in a collateral-related Chapter 9 involving
21	the
22	MS. McDOW: Right.
23	THE COURT: Tulare Local Healthcare District, in
24	which similar allegations are being made. And since you
25	have now and I was and given the need for speed here,

```
I was trying to make sure that we had given the best notice
 1
     we were able to give in spite of circumstances. But with
 2
     that said, I'm not clear from the Delaney declaration where
 3
     the cert -- where the notification to HCCA is then.
 4
 5
     help me to understand that, please.
          MS. McDOW: And, your Honor, the -- if you look
 6
     towards the end of that. It is HCCA, the sole shareholder
 7
     of HCCA is Benzeevi, so that was the -- B --
 8
 9
     B-E-N-Z-E-E-V-I, at HCCA, which is Healthcare Conglomerate
10
     Associates, dot com.
11
          THE COURT: Where -- what line is that, please?
                                                            I'm
12
     looking at --
13
          MS. McDOW:
                      At line -- I apologize, your Honor.
                                                            Line
14
     22.
15
          THE COURT:
                      The very last e-mail address?
16
          MS. McDOW:
                      Correct, your Honor. Correct.
17
                      And that is the sole shareholder of this
          THE COURT:
18
     HCCA group?
19
          MS. McDOW:
                      It is, your Honor. And Mr. Germany, who
     is the -- Alan Germany, whose e-mail address is immediately
20
21
     preceding Mr. Benzeevi's, he is the -- what I'll say is the
22
     face of HCCA, certainly at Inyo. So he is the person who
23
     has the most -- I'll say on the ground, you know,
     interfacing with the District. So in an abundance of
24
25
     caution, we gave him notice of the same.
```

THE COURT: This is the same Mr. Germany who's been giving declarations throughout the course of your Chapter 9 case here before me?

MS. McDOW: Correct, your Honor.

THE COURT: Okay. I'm not -- did you attempt to serve the agent for service of process or give notice there?

MS. McDOW: Your Honor, I don't know who -- I can actually bring Michael -- and I apologize, your Honor. I had tasked him with service while I dealt with the emergency that I'm going to apprise the Court of shortly. So if your Honor would like, I can see whether and who the agent for service is, but I don't -- I don't know, your Honor, whether that was --

THE COURT: Okay. For now, let's do this. Go ahead and add -- you wanted to add some flavor or some color to things -- and I have read your papers, so you don't need to reiterate that.

MS. McDOW: Correct, your Honor. Thank you.

After that -- after we had filed the emergency motion for the reasons we set forth in -- in the motion, this morning, we were served and proceeded to take part in a -- with a search warrant from the County of Tulare. The search warrant was served by five -- five representatives of this -- the district attorney's office in Tulare and two sheriff's deputies from the County of Tulare. They had a

very specific list of things they were looking for,
property they think has been in their again, this is
I don't know. I'm representing to the Court I don't have
any experience in criminal law. This is not what I do. Or
search warrants. But represent to the Court that there are
a number of check boxes checked boxes on this form, many
of which are, you know, that the property was stolen or
embezzled, the things were used for the means of committing
a felony, and that these things are things that can be
seized. And then there's a list of certain equipment
that it it appeared after our discussions with, you
know, again, those people who were conducting the search,
that they believe that a number of things have been
transferred equipment, you know, medications, that those
things have been transferred from Tulare to Inyo.
So for a good good four hours or so this
morning, we obviously, we did everything we could to
comply with the search, you know, had discussions. They
were very interested in funds that had been transferred
from Tulare to the District. The manner in which a lot
of questions about the manner in which HCCA had been
funding and had been, you know, providing the District with
funds. So it was it was quite a fire drill.
I insured you know, again, was kind of, as
much as I could be present, that no despite the ability

and the search warrant for them to seize things, that, you
know, these were things that were vital to our operations,
that we would work with them, that we would you know,
you can take pictures. You can identify. We we
understand the the you know, what needs to be done.
But we also you have to understand we need these things
to operate. So they didn't remove anything, except a
couple of thumb drives full of files.
And, you know, again, we're going to be we are
really trying to get an open line of communication with
Tulare, because it appears we we suffer from the same
problems. So we are trying to keep that line of
communication open and certainly going to follow up, you
know, with those who conducted the search, to try to get to
the bottom of it.
So that is, again, you know, another reason that
we think the relief that we've sought, you know, in this is
warranted. Again, it's what has been what has been
published in in the press and, you know, throughout
throughout Tulare is really striking a chord with the
board, unfortunately, and it seems eerily similar to, you
know, again, kind of what what we've been experiencing.
So the only plus that we have and, again,
that's a blessing and a curse is that, you know, since
we've been in, this board has really really come to

```
understand what this hospital needs, and we have an
 1
     interested party as far as CFO from -- I'm going to butcher
 2
     this -- but Tehachapi, who we think as long as we can
 3
     commit to two or three years, he is willing to come in --
 4
 5
     and I think the figure is 200,000 for the entire year,
 6
     which as the Court knows and probable most of the creditors
 7
     on the phone, is a small fraction of what the management
 8
     fee was.
               We're also lining up, and one of our immediate
 9
     problems, at least it appears from what financials we do
10
     have, is, you know, making sure that the operations can
11
     continue to be funded. If for some reason HCCA or V.I.,
12
13
     you know, makes an election not to continue to fund the
14
     line of credit, we have the ability now -- I was waiting
     for confirmation from the client before the hearing but
15
     have not received it. But they were comfortable that we
16
17
     have enough A.R. now -- again, it's sequestered now.
                                                            Ιt
18
     should be to fund payroll for the next two weeks, which is
19
     a blessing. We are getting -- and we had already started
20
     to put in place a loan from --
21
          THE COURT:
                     Ms. McDow --
2.2
          MS. McDOW:
                      Yes.
23
          THE COURT:
                      I think I understand.
                                              Thank you.
24
          MS. McDOW:
                      Okay.
25
          THE COURT:
                      Let me just ask --
```

1	MS. McDOW: I apologize.
2	THE COURT: a few pointed questions here. I think
3	we're a bit far afield of where we need to be today. So
4	let me confine
5	MS. McDOW: I apologize.
6	THE COURT: this to the real issue here in front of
7	you.
8	So now that we have learned that neither of the
9	attorneys, which I added to your order, Mr. Levinson or
10	Mr. Bedoyan, represent that party in this action, we have
11	some questionable issues about service.
12	Do I understand you correctly that the search
13	warrant was served on Southern Inyo Healthcare?
14	MS. McDOW: That is correct, your Honor.
15	THE COURT: So the allegation is that there has been
16	transfers of assets or funds from the Tulare debtor before
17	Judge Lastreto to your client?
18	MS. McDOW: Correct, your Honor. That is correct.
19	THE COURT: Can you give me a grocery list, summary,
20	please, of the allegations and I don't need you to rebut
21	them. Just tell me what is it that they are telling you,
22	if you know, has been taken from the Tulare hospital and
23	moved into the possession of your client.
24	MS. McDOW: Absolutely. And I I can recite
25	certainly what what it is they're looking for, which I

think is one in the same for this.

It is large hospital equipment, such as beds, gurneys, x-ray and surgical equipment, I.V. pumps, kitchen or food services equipment, such as microwave ovens and refrigerators. And then the second kind of section is just a search of all physical locations where hospital equipment and supplies can be stored, including but not limited to, general medical and office supplies and pharmaceutical supplies. And the last kind of substantive piece is the search shall include but not be limited to all hard copy files or electronically stored computer files for the purpose of locating any and all invoices, receipts, billing and payment slips, purchase orders, equipment, and supply transfer and receiving slips.

THE COURT: Okay. Do you have the understanding that funds may have been transferred too?

MS. McDOW: I do, your Honor, from my own -- again, I don't profess to be a forensic accountant, but I've spent a good chunk of time over the past week looking at our -- the bank statements that I've received. And I do believe that to be -- to be accurate. I can represent to this Court that there were millions transferred back and forth between the two, between -- I apologize. Between Tulare and Southern Inyo. But it not did appear to be the focus -- I asked that specifically -- the focus of the D.A. -- the

1	district attorney or the sheriff's investigation today.
2	THE COURT: And that's the Tulare County District
3	Attorney?
4	MS. McDOW: Correct, your Honor.
5	THE COURT: Millions back and forth between these two
6	entities?
7	MS. McDOW: Correct.
8	THE COURT: Very well. And there are allegations
9	that and who knows which way that will net, in favor of
10	the in favor of the Tulare hospital or in favor of
11	Southern Inyo. We don't know how that will shake out.
12	MS. McDOW: Your Honor, it shows, again, that based on
13	what I can do, the best that I can do is look at the actual
14	bank statements and show, okay, there's a wire to Tulare.
15	There's a wire back. The expense that HCCA is going to
16	claim that funds were sent to Tulare on behalf of HCCA and
17	something happened on that end. I'm not sure. But if you
18	just look at the net-net, there is \$418,000 owed to
19	Southern Inyo by Tulare.
20	THE COURT: All right. Do you have any idea when you
21	will know more about all of this?
22	MS. McDOW: Your Honor, what we hope to do is, again,
23	the board understands we immediately need (inaudible)
24	what happens as far as termination today or in the next few
25	weeks, a CFO. We need somebody in there with the finances

```
so I'm hoping that's going to happen in the next ten days.
 1
 2
     Like I said, they've been -- the board is very good, very
     concerned. They've been working like crazy to interview
 3
     people and get a new --
 4
 5
          THE COURT: Ms. McDow --
                      -- CFO --
          MS. McDOW:
 6
          THE COURT: -- I'd like you to focus on my question.
 7
     You're not responding to me, and I really would like you to
 8
 9
     do so, please, and confine yourself to my question.
               When will you know more about who -- which
10
11
     direction this is going to net? It's a time question.
          MS. McDOW: Your Honor, again, to confirm what I've
12
13
     done with someone more credible, probably three weeks to a
14
             I'd like someone to have all of our financials and
                           So my quess would be 30 days to have
15
     really look at them.
     something that we can put in a declaration with any
16
17
     definitive --
          THE COURT: Okay. And Mr. Germany, I had the sense --
18
     and forgive me -- it's been a couple of weeks since I've
19
     looked at this -- but Mr. Germany, I believe, was employed
2.0
21
     at Southern Inyo. Was it on a contract basis to serve as
     the chief financial officer, or was he a regular employee?
22
                      Your Honor, the District's understanding
23
          MS. McDOW:
24
     was that he was employed by HCCA, and that his salary was
25
     to be encompassed within the $65,000-a-month management
```

1	fee. I did find, when I looked at the bank statements,
2	that there were some payments made directly from Southern
3	Inyo to Mr. Germany; however, they were few and far
4	between. So we do not believe we've never understood
5	that he's an employee of the District, but rather of HCCA.
6	THE COURT: And that's how that is, perhaps, how
7	these events transpired is through his through him?
8	MS. McDOW: Without a doubt, your Honor.
9	THE COURT: Okay.
10	MS. McDOW: He is the one that has been has sole
11	control of our bank accounts, all of our finances.
12	THE COURT: Well, here's what I'm inclined to do:
13	Other than the relief that I have granted in the
14	order-shortening time, allowing HCCA to be removed from the
15	bank accounts, unless you can articulate other relief that
16	needs to happen, I'm inclined to continue this for service
17	and a briefing schedule, in light of all of that.
18	Is there other relief you feel needs to be
19	afforded today for your motion? It seemed to me that's
20	probably the most we can do.
21	MS. McDOW: Your Honor, again, a couple twofold.
22	One, we were seeking a full a full cancellation of the
23	agreement, but I understand, your Honor, that that's
24	hard-pressed to do, especially with no notice. So I
25	respect the fact that that will need

1	THE COURT: Right.
2	MS. McDOW: a little more time. And then a
3	continuance of the plan of disclosure statement, just to
4	allow us time
5	THE COURT: That's fine. I'll give you time on that.
6	MS. McDOW: Yes. Yeah. Yes.
7	THE COURT: But that's the relief. Correct?
8	MS. McDOW: Correct. Thank you. Yes. Correct, your
9	Honor.
10	THE COURT: Okay. Turning to the other parties on the
11	line. Mr. Goldstein, Ms. Peters, Mr. Sims, anybody want to
12	be heard on this?
13	MR. GOLDSTEIN: Your Honor, this is Eric Goldstein. I
14	I I don't need to be heard on it.
15	MR. SIMS: Your Honor, Gerald Sims. I don't have
16	anything to add.
17	THE COURT: Okay.
18	MS. PETERS: Your Honor, Lisa Peters, on behalf GE
19	HFS. I don't have anything to add, but appreciate
20	counsel's update, particularly with respect to the search
21	warrant. My client is an equipment lessor to both Southern
22	Inyo as well as Tulare. So obviously to the extent there's
23	any allegations of equipment being swapped, that's
24	something we will want to visit with both debtor's counsel.
25	So, again, appreciate the update.

THE COURT: And, Ms. Tubesing, you're monitoring but
not making any appearance at this juncture?
MS. TUBESING: Correct, your Honor.
THE COURT: Very well. Thank you.
Ms. Estrada, would you remind me when the status
conference comes up in this case, please?
THE CLERK: Yes, your Honor. That's scheduled for
November 1st at 1:30, your Honor.
THE COURT: Okay. I am going to allow, and have
already allowed by virtue of the order I signed, the debtor
to remove the name and signature authority signatory
authority of HCCA from the bank accounts of the debtor.
I am going to continue this to November 8th in
Bakersfield and that would be at 11 o'clock,
Ms. Estrada?
THE CLERK: Yes, your Honor.
THE COURT: 11 o'clock. Opposition may be filed by
HCCA by Wednesday, November 1st. Debtor will give me an
up an order granting the relief and continuing this, and
serve that not later than and I want 7004 service on
that, please not later than Monday, October 23rd. Not
later than Wednesday, October 25th, I would like a brief
from the debtor on whether, in fact, this is an executory
contract, with citation to applicable portions of the
agreement. My memory and I'm going from memory so

there's a good chance I'm going to get some of this wrong
but my memory is that the most commonly accepted
definition of executory contract is by Professor Vern
Countryman, who says that there must be performance due by
both sides and that the performance must be something other
than the payment of money. So I would like a brief,
including citation to applicable portions of the contract,
specifically that shows where that that this is, in
fact, an executory contract. You may brief such issues as
are appropriate.
It seems to me that we need to know that this is
an executory contract. I will also tell you that if it is
not, we are, perhaps, down to post-petition transfer of
assets and recovery under 540, I believe, that's 9. The
debtor may also brief such additional issues as they deem
fit, and it does seem to me that this is a question of
business judgment. So I don't know that the debtor has to
prove nefarious deeds. I think they can show that this is
a proper exercise of business judgment, and it would be
difficult to defeat that.
Any other party wishing to be heard, creditors or
other parties may also file opposition by Wednesday, the
11th. I will ask Ms. McDow to upload the order and to

serve it when she serves the motion and -- serve the order

and the motion on HCCA.

```
1
               Mr. Goldstein, Mr. Sims, Ms. Peters, did any of
 2
     you need to approve the form of the order?
          MR. SIMS:
                     This is Gerald Sims.
                                            I don't need to see
 3
 4
     it, your Honor.
 5
          MR. GOLDSTEIN: Eric Goldstein, your Honor.
                                                        Same
 6
     thing.
 7
          MS. PETERS:
                       This is Lisa Peters, same.
          THE COURT:
                      Very well.
                                   Ms McDow, anything further
 8
 9
     from yourself?
10
          MS. McDOW:
                      Your Honor, just a -- more of a procedural
11
     question. We are --
          THE COURT: Oh, excuse me. One other thing.
                                                         I will
12
     continue the -- I'm going to have my deputy issue a
13
14
     separate order -- I will continue the status conference in
15
     the Chapter 9 to the same date and time, and I presume
16
     that's not a hardship on you, Ms. Tubesing to appear by
17
     phone?
18
          MS. TUBESING:
                         That's fine, your Honor.
19
                      Okav.
                             That will be the other thing I
          THE COURT:
20
              Go ahead, Ms. McDow.
     forgot.
21
          THE COURT:
                      Just a second. Excuse me.
22
          MS. TUBESING: And I'm sorry, your Honor. I also note
23
     that the disclosure statement is set for that same date,
24
     November 1st?
                                And we'll continue that at the
25
                      Correct.
          THE COURT:
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same time. We're -- I understand that we're going to have to reset dates, but we'll deal with all that on the 8th.

Go ahead, Ms. McDow.

MS. McDOW: Thank you, your Honor. The other pieces we actually are seeking in addition to rejection, authority to terminate. And my quess is -- and I don't know -- that the Court would prefer and, perhaps, require that to be done by way of an adversary proceeding. Because, again, part of our concern, in addition to just defining the measure of damages, is making sure that we can regain all of the management back. And understand, it's kind of funny thing that when you reject, in theory, those people can still come do what they do. But for a number of reasons, we want it to be terminated. So would your Honor be willing to entertain that by way of motion, or would your Honor require or prefer that we do that by way of an adversary, again, as soon as humanly possible.

THE COURT: I took your motion -- and I don't think you -- and you'll forgive me. I had about half an hour with it, so I probably don't fully understand all of it.

But I took your motion to be a rejection under 362 -- excuse me -- 365(d)(2), which is incorporated by section 901. I am invoking my powers under 105(a) to implement the 365(d)(2) rejection. I don't think 704 or 1106 is applicable here, because neither is incorporated by 901.

Doc 490

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1	So I took that as a rejection.
2	Now, you're saying it's not that, but it's a
3	termination, and I'm not sure I'm seeing that in your
4	brief. And I'm not entirely clear on what the difference
5	is, so I'm and this is at a very preliminary stage, so I
6	guess I could use a little enlightenment here. What do
7	I have the basis for your relief wrong?
8	MS. McDOW: Your Honor, it was twofold. We had
9	actually planned to rejection and, again, this has all
10	kind of been, you know, a reactive, that we had still
11	planned to reject by and through the plan and
12	THE COURT: So this is not a rejection?
13	MS. McDOW: This was not, your Honor. This was a
14	this was seeking a a termination of the contract.
15	THE COURT: Well, what would be the basis under the
16	other than 365(d)(2) for termination? I don't I don't
17	understand.
18	MS. McDOW: It's your Honor, it was, as as best
19	we could in the time we had, it was again, other than
20	the factual bases that were in there, it would be a 105,
21	which, again, I understand I understand both this
22	Court's I don't want to say hesitation, but conservative
23	approach to 105, which is why I think given this given
24	the extension of you know, the time that the Court is
25	willing to give, that perhaps we do it by way of adversary

IN RE: SOUTHERN INYO HEALTHCARE DISTRICT 10/17/2017

proceeding. I think that's probably -- I think it's on the line of whether or not this sort of relief required an adversary. But given now it is the time, I think it's probably the more appropriate way to do it as far as --

THE COURT: Well, I'm happy to let you pitch it however you'd like it. I will tell you that my reading of Law vs. Siegel is a criticism -- among other things -- is a criticism of the usage of 105 and that you need to be able to articulate a specific section in the Bankruptcy Code that you are seeking to effectuate through 105.

I took your motion -- and I understand why it was very loosely worded, given the speed and the -- the lack of clarity, understandably, that your office still has about this problem, but I took this to be a rejection under 362(d)(2). If that's not it, correct me. I think I can use 105 to tell you you can take your name off the bank accounts because I am effectuating that rejection.

If you want something else, it's going to be up to you to pitch that, and I'm not sure that you can open the universe with 105. I think you need to show me where -- what you're tying it to. Whether or not that should be an adversary or a motion. I don't know. What I got from you as a motion. Are you -- so I -- I kind of feel like you're asking me to weigh in on something not in front of me. I --

1	MS. McDOW: Sorry, your Honor. Sorry. Go ahead.
2	THE COURT: If you can clarify it, I'm happy, but
3	that's the way this looked to me. Is that not it?
4	MS. McDOW: Your Honor, no. You are you are right
5	in part. And I understood again, I'd like to think I've
6	learned a lot of things about this Court, certainly in the
7	past couple of years, and I understood that very likely a
8	full termination, as opposed to the immediate relief given
9	what we believe to be the the the irreparable damage
10	to the District, that as far as a broader termination, it
11	was I my best guess was that we were going to have to
12	do that by way of adversary proceeding. So you were
13	correct, except that the termination that we are asking
14	for, I believe, is is more appropriate full termination,
15	as opposed to rejection by way of an adversary. I think
16	your Honor
17	THE COURT: What is the authority? Is it state or
18	bankruptcy law or something else, for termination, in your
19	view? What is the authority for that?
20	MS. McDOW: Your Honor, based on what I know now and,
21	again, it's a it's a big learning curve in the past ten
22	days. It's going to be a judicial cancellation under state
23	law, as far as policy, harm to the public, and frustration
24	of purpose, a number of but it will be state law claims
25	for the full termination.

THE COURT: Are you rescinding this for fraud?
MS. McDOW: Your Honor, rescission was one of the
one of the options I pursued although I'm not sure yet,
again, as we sit here now, before I can do a little bit
more investigation, whether or not what restoring the other
side to their pre-contract positions really mean for us.
So I'm not prepared I just don't feel comfortable
representing to the Court that that will be it. But it
will be a cancellation or a rescission, again, based on
what I know now. I just have to understand exactly what's
been given on either side, I think, before I, you know,
file a pleading in good faith saying this is or an
adversary saying that, your know, this is what we're
what we're seeking. But it will be again, very
comfortable it will be cancellation or rescission, as far
as what we do with the contract.
THE COURT: So it might be rescission. It might be
declaratory relief, in essence, based on breach?
MS. McDOW: Correct, your Honor.
THE COURT: Okay. If it is not 365(d)(2), I start to
wonder about where my jurisdiction for that comes from, but
I'll guess we'll solve that at a later date.
Is the order that we have made so far today in
keeping with your request, or should I not be doing that?
MS. McDOW: Your Honor, I think that maybe we just

broaden the scope of the order to be that by October -maybe file a lawsuit by October 25th is a little bit -- a
little bit -- that being a little bit too much on --

THE COURT: I'm not -- I feel like I've ruled on as much of it as I can, given the motion. So I'm not inclined to broaden the scope of things. If you're telling me you don't know want the order I made, I'm glad to not give you an order, but I thought you did want that. Would you correct me if I'm mistaken?

MS. McDOW: No, your Honor. I think we need to do both rejection and termination, so I think that your Honor's briefing, as far as rejection, is fine. We will --again, we will brief that in accordance with the order and the time that the Court just gave. And, again, I think that the issue, as far as actually terminating is going to have the largest impact on the timing for the plan of the disclosure statement. So we'll just endeavor to get that filed as quickly as we can.

THE COURT: Sure. And I would say, take your time and get it right. And if you could articulate for me the next time we visit on this status conference as to what exactly you're trying to do. Having listened to you, I'm still not clear -- and it's probably me -- on what you think you're going to do beyond rejection. I suspect maybe you're either going to try and rescind for fraud or get a

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declaratory relief that your client is relieved of their
 1
 2
     obligations based on a material breach by the other side.
     I'm not sure. We have other issues. If you could work to
 3
     clarify for me what -- what you're trying to do, that would
 4
     be helpful because I'm -- I'm really afraid I don't
 5
 6
     understand it beyond that.
 7
          MS. McDOW:
                      I absolutely will and I apologize, your
 8
             I've been on a learning curve, so I apologize for
 9
     my -- my lack of clarity, as far as what -- what -- what
10
     we're trying -- what we're trying to do and how we're going
     to achieve it.
11
                     But I --
12
          THE COURT:
                      It's probably --
13
          MS. McDOW:
                      -- I will make it more clear.
14
                      It's probably me, Ms. McDow.
          THE COURT:
15
               Okay.
                      Anything further today?
16
                      Not from me, your Honor.
          MS. McDOW:
17
          THE COURT:
                      Okay. Those will be the orders and do
18
     upload your order, and we will deal with it as rapidly as
19
     possible.
                Thank you.
20
                      Thank you, your Honor. I thank you again
          MS. McDOW:
     for the shortened time.
21
2.2
          THE COURT: We are in recess.
23
                    (End of recorded proceedings.)
24
25
                               -- 000 --
```

1	STATE OF CALIFORNIA)) ss
2	COUNTY OF FRESNO)
3	
4	I, Sally A.F. Turner, CSR No. 11709, a Certified
5	Shorthand Reporter in and for the County of Fresno, State
6	of California, do hereby certify:
7	That I transcribed the recorded proceedings held on
8	October 17, 2017, in the above-listed matter, to the best
9	of my ability, which was taken down by me in shorthand and
10	thereafter reduced to computerized transcription under my
11	direction and supervision. I hereby certify the foregoing
12	transcript is a full, true, and correct transcript of my
13	shorthand notes so taken.
14	I make no representations as to the accuracy of the
15	speakers and/or testimony since I was not physically
16	present during the recording.
17	I further certify that I am neither counsel for nor
18	related to any party to said action nor in any way
19	interested in the outcome thereof.
20	
21	
22	
23	
24	Sally A.F. Turner
25	Certified Shorthand Reporter No. 11709

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

SOUTHERN INYO HEALTHCARE Case No. 2016-10015 DIVISION

Chapter 9

BEFORE THE HONORABLE FREDRICK E. CLEMENT BANKRUPTCY JUDGE AUGUST 29, 2018

Proceedings recorded by electronic sound recording.

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 1
 2
 3
    FOLEY & LARDNER, LLP
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    555 South Flower Street, Suite 3300
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    Appearing for Healthcare Conglomerate Associates, LLC
20
    VI Healthcare Finance, Inc.;
21
22
    ALSO PRESENT:
23
    Carmen Contreras-Martinez, by phone
24
25
```

Doc 490

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Case 2016-10015
 1
 2
 3
             THE COURT: First matter is Southern Inyo
    Healthcare District, 610015 is the status
 4
 5
    conference.
 6
             MS. MCDOW: Good afternoon, Your Honor.
 7
    Ashley McDow, Foley & Lardner on behalf of the
 8
    Debtor, Southern Inyo Healthcare District, Your
 9
    Honor.
10
             THE COURT: Good afternoon.
11
             MS. MCDOW: Good afternoon. Also present
12
    in the court, Your Honor, is the CEO, Brian Cotter,
13
    and Jaque Hickman, who is the Board president, Your
14
    Honor.
15
             THE COURT: Okay.
16
             MR. WALTER: Good afternoon, Your Honor.
17
    Riley Walter appearing on behalf of Tulare Local
18
    Healthcare District.
19
             THE COURT: Good afternoon.
20
             MR. BEDOYAN: Good afternoon, Your Honor.
21
    Hagop Bedoyan appearing on behalf of Healthcare
    Conglomerate Associates, LLC and VI Healthcare
22
23
    Finance, Inc.
24
             THE COURT: Very well. Any other
25
    appearances this matter? Hear none.
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```
1
             Ms. McDow, thank you for your very detailed
 2
    and thoughtful status report.
 3
             THE CLERK: Excuse me, Your Honor. I think
    we have two appearances by phone.
 4
             THE COURT: Oh, do we? Excuse me.
 5
             Do we have some by phone? Is --
 6
 7
             THE OPERATOR: Your Honor, this is the
 8
    operator.
 9
             THE COURT: Yeah.
             THE OPERATOR: We have Carmen Contreras-
10
11
   Martinez as listen only.
12
             THE COURT: Okay.
13
             THE OPERATOR: We had listed Latonya
    Williams. We were unable to reach her, and she has
14
15
   not dialed in.
16
             THE COURT: Okay. Do we have Carmen
17
   Contreras-Martinez on the line, just listen only?
18
            MS. CONTRERAS-MARTINEZ: Yes, Your Honor.
19
             THE COURT: Okay. I'm going to assume
20
    you're not participating, listening only. If that
21
    changes, do speak up.
22
            MS. CONTRERAS-MARTINEZ: Thank you, Your
23
   Honor. I will.
24
            THE COURT: Okay. I did receive your very
25
   thoughtful and detailed report. Thank you.
```

```
1
             Is there anything you need to add to it or
 2
    wish to add to it?
             MS. MCDOW: Your Honor, the only piece we
 3
    would add is that the money that we had identified
 4
 5
    as anticipating would be collected, about 98 percent
    give or take -- my math is not perfect -- but a
 7
    very, very high number has been collected since,
    Your Honor.
 8
             THE COURT: Okay. So that is the extent of
 9
10
    the augmentation.
             Are there creditors who wish to be heard on
11
12
    this?
13
             MR. BEDOYAN: Yes, Your Honor. Hagop
    Bedoyan on behalf of HCCA and VI Healthcare.
14
15
             THE COURT: Okay.
16
             MR. BEDOYAN: I just want the record clear.
17
    The Debtor references on page 12, lines 12 through
    21, discussion about mediation, claims against
18
19
    Baker. I just want it clear that we have discussed
    mediation. We've discussed mediation as to the
20
21
    particular adversary proceedings proceeding against
22
    my client as well as a global mediation effort,
23
   which would include the -- what my client believes
24
    are malpractice claims against Baker and Ashley
25
    McDow and --
```

```
THE COURT: I'm sorry. Against?
 1
             MR. BEDOYAN: Ashley McDow.
 2
             THE COURT: Okay. Against counsel for the
 3
 4
    Debtor personally?
             MR. BEDOYAN:
                           That's correct.
 5
             THE COURT: Okay.
 6
 7
             MR. BEDOYAN: And her current firm, Foley &
    Lardner.
 8
             Debtor -- my clients have recently hired
 9
10
    malpractice counsel in Orange County as of August
11
           The files have not been turned over to my
    client. The idea that mediation, global or
12
13
    otherwise, could occur by mid-September is really
    not possible. I've been asked to inform the Court
14
    that once malpractice counsel has had a chance to
15
16
    review the files, perhaps more realistic would be
    mediation near the end of the year. Again, the
17
    relationship between my clients and Ms. McDow's
18
19
    former firm, Baker Hostetler, is quite extensive and
20
    lengthy.
21
             So the Debtor's report doesn't specifically
22
    say that the claims include negligent --
23
    professional negligence, breaches of fiduciary duty,
    but that is what we're talking about when we talk
24
25
    about a global mediation.
```

Again, this is a Chapter 9 case. The Court doesn't have to employ -- approve people's employment approve fees, but I do want -- I do want the Court to understand that the idea that somehow all of these very thorny, lengthy issues, including malpractice claims, can be resolved in mediation by mid-September is really unrealistic.

THE COURT: I see. Anything else Mr. Bedoyan?

MR. BEDOYAN: Some of the statements about the history of the case are -- my clients have some concerns about, but the primary point that I wanted to bring to the Court's attention is the -- is the concept of mediation and just exactly what claims are involved and who is involved.

THE COURT: Okay. Mr. Walter?

MR. WALTER: Your Honor, we have had some preliminary discussions with Southern Inyo about participating in a mediation, if and when one is set up. I will report that we've been trying to get some additional information from Southern Inyo, and we have not yet had success. But this is the first time that I've met Ms. McDow, and I'm sure that I can talk with her after the hearing and find a way to get that information.

THE COURT: Okay. And this has to do with the HCCA problem?

MR. WALTER: No, Your Honor. It has to do with physical assets of my district that may have gone and may still be with Southern Inyo.

THE COURT: Okay. All right.

Ms. McDow, I guess I'm very concerned about the status of this case. We are coming up on three years, and we have not yet even come to a place where plan confirmation is seriously on the table. There have been a couple of preliminary attempts, didn't get past the disclosure hearing. Still don't have another plan on file.

I guess I am losing faith that we are really going anywhere here, and that is troubling to me. And at some point I'm going to have to dismiss this case if it doesn't move forward. We keep wallowing around in this, and I just don't see that we're getting to confirmation.

You report good things, and I'd like to believe that, that puts us on track. But each time we get to a status conference, we still don't get anything done in terms of a plan being pitched to creditors. So I guess I'm a little troubled here and would like to know when we're likely to see

1 | that.

MS. MCDOW: Your Honor, if I could make a suggestion. What is now -- I don't want to say holding up the fence certainly, but these are big claims we're talking about, whoever they are, whoever it is they're against.

Just to be clear for the record, when I prepared the status report, I was not yet on notice that I was being potentially sued personally or that Foley & Lardner, which is why they are not in the status report. It wasn't a -- certainly a misrepresentation on my part.

MR. ARNOLD: I didn't take it as one.

MS. MCDOW: Your Honor, what I think would be helpful is for this Court to set a date by which mediation would be -- would be completed or at least should be attempted because it is my feeling from the parties that it's a chicken and the egg.

They're maybe not trying to actively work towards mediation in the hope that the case will just get dismissed if there's no mediation.

So I think it would really help move the case forward if the Court would set something. I understand maybe mid-September is not enough, but I don't know that the malpractice lawyer needs three

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and a half months, four months to get ready to have
 1
 2
    a mediation about this.
             THE COURT: Given the complexity here, it
 3
    wouldn't surprise me if it were to take some time.
 4
             MR. DAVIS: I understand, Your Honor.
 5
 6
    don't -- again, I guess if he needs four months and
 7
    the Court is comfortable that, again, we won't
    object. But I think if Your Honor --
 8
             THE COURT: It's not that I'm comfortable
 9
    with it. It's that I've been uncomfortable with
10
    this case for a long time because it doesn't seem to
11
    be moving forward. The question really is at what
12
    point I issue an order to show cause for dismissal
13
14
    and say, all right, now is the time, and I really
15
    feel like I'm very close to that at this point.
16
             So I'm not sure I'm willing to set a
17
    mediation date. I'm just telling you that at some
    point I'm going to issue an order to show cause that
18
    says you better explain to me why we shouldn't do
19
20
    this right now and just dismiss the case.
21
             MS. MCDOW: I understand.
22
             THE COURT: So when are we likely to see a
23
           Do you we know?
    plan?
24
            MS. MCDOW: Your Honor, I think given the
25
    number -- the amounts of the claims that are, again,
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between these parties, and now it's a couple of other parties not at the table, that, that's a big — we need to have that resolved to have the plan be made. It doesn't mean we can't present alternatives in a plan, but I believe it's the most effective use of the Court's resources that this — to wait until that 10 million or so, again, amongst different parties, is resolved, and then the plan can be presented pretty quickly after.

Again, the revenue is up. There's, you know, the revenue issues. There's the claims piece that I think -- I'm hopeful that at mediation, if and when we can have it, will be resolved with the last -- the final piece of the puzzle. So I would --

THE COURT: You think that this is the only issue holding up plan confirmation?

MS. MCDOW: It's not the only issue, Your Honor, but it is far and away the biggest issue.

THE COURT: No. I'm aware of that. I'm also looking back at your status report, and my memory is that under paragraph IV(a)(3) you were also trying to get a sales tax in place that is part of the funding here. And I don't profess to be an expert on these things, but I have the sense that,

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that's a somewhat long and involved process.
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             And at this point, according to the way I'm
2
    reading this on page 16 at line 13, it says,
 3
    "Although Southern Inyo Healthcare District has not
 4
    yet received a formal response from the County and
5
    cannot opine on the County's perspective, it intends
6
7
    to follow up."
8
             But whether they're going to and whether or
9
   not -- I don't know whether this who -- can this be
   done by the majority, the board of supervisors? I
10
   don't think it requires voter approval, but I don't
11
12
    really know. So --
             MS. MCDOW: You're correct, Your Honor.
13
    Well, you're correct in the sense that it doesn't
14
15
    require voter approval. I'm not --
16
             THE COURT: I mean, populous --
17
            MS. MCDOW: Yes, correct.
18
             THE COURT: -- voter approval.
19
            MS. MCDOW: Correct. Your Honor, the sales
20
    tax increase is not something in our projections as
21
    they currently are stated that we're depending on.
22
   Again, this is -- the Board and District are always
   trying to do different things. They always are.
23
24
   That's one of the reasons that I think you don't
25
   have any --
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1 THE COURT: I'm sorry. They're not moving 2 in the same direction? When they're trying to do 3 different things, you're telling me they're working 4 at cross purposes? MS. MCDOW: No, Your Honor. 5 Just dual 6 They're trying to find -tracks. 7 THE COURT: Okay. 8 MS. MCDOW: -- do things, and I think that 9 really shows, which is why, despite that we've been 10 here three years, you've never had a creditor in 11 here complaining. Obviously, Optum (phonetic) 12 appears, but by and large they are working together. 13 So this is more an example for the Court of 14 an avenue we're trying to pursue, but I can 15 represent to the Court, this is not -- our plan is 16 not dependent on this piece at all. It's too 17 speculative because we -- again, we're at the very 18 preliminary, but it's here for, you know, as a 19 disclosure of what it is that we're contemplating. 20 But the plan in no way depends on the sales tax 21 interest. 22 THE COURT: Okay. So we're back to the 23 question: when do you think you're going to have a 24 plan ready to go? I mean, Mr. Bedoyan says that

middle September for mediation is not realistic.

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EXHIBIT H 117

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don't know anything about these claims other than what little is in the status report. You tell me you're brand new to this issue. I'm going to assume this all arises out of the things that have been going on for the past two and a half or more years in this court and your handling of them.

I am going to presume that Baker Hostetler carries a generous errors and omissions policy that continues to cover you; I assume, although it's claims made, and I don't know how that affects the fact that maybe that came through after you'd switched firms. I assume Foley & Lardner has one.

dealings, my guess is it's going to take several months for review of the files and just to get any sort of notion about what the parties think their respective exposures, if any, are, the likelihood of an adverse result, as well as the potential dollars attached to that.

So I can easily see this going three or four months before -- and frankly, probably a lot longer, before the parties feel comfortable sort of setting forth their position. So I'm not at all surprised.

Short of setting a bar date, is there

anything that we can do to move this case forward, Mr. Bedoyan?

MR. BEDOYAN: Well, the idea of global mediation is a subject that was raised by the District's special counsel, Jeff Schinbrock (phonetic), who is the attorney of record in the adversary proceeding against my clients, and it was in response to a concern, you know. If there were breaches of fiduciary duties, those duties wouldn't necessarily be limited to those that are owed to my clients, VI Healthcare and HCCA. There would also be breaches of fiduciary duties owed to the District because, obviously, the Baker Hostetler firm has been involved with this case for two and a half years and has generated a great deal of fees. Again, I don't know if those fees have been paid or not. It's not relevant, but Mr. Schinbrock felt that, that's why the global settlement idea would make sense.

If the global settlement approach isn't necessarily required, the adversary proceeding issues would probably be resolved one way or the other much faster than early next year I'm guessing.

But ----

THE COURT: And some of the -- there are

EXHIBIT H

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1 actions filed outside of those in this court? MR. BEDOYAN: No actions at this point. 2 There are tolling agreements that have been signed 3 and continue to be signed. Again, this malpractice 4 5 counsel was just engaged on August 20th and has 6 asked me to represent that to the Court. 7 Your question, if I may, Your Honor, Ms. McDow talks about the claims having to be 8 9 resolved, and that's really the problem. You know, I'm relatively new to this case. I just went back 10 11 and read the District's last status conference 12 report that was filed on May 17th, Docket Number 13 431. The same issues that the Debtor talks about as 14 being somehow the panacea or the source of funds -1.5 the LA Department of Water and Power case, the 16 outpatient lamp services. LA department of Water 17 and Power are supposed to have a meeting on May 25th 18 if you read the last status report, and in the 19 current status report there's no discussion on what 20 happened on May 25th. 21 The sales tax increase, as the Court points 22 out -- again, I'm not a municipal law attorney, but 23 just in a very simplistic sense, I would think the 24 voters would have a say on sales tax increases.

The bond measure that the District was

EXHIBIT H 120

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hoping to pass in April didn't pass, and I think in one of our earlier status conference hearings, there was some reference to revisiting the tax increase in a November election. Interestingly, in the current status report, there's no discussion on whether that measure is even going to be on the ballot. So the revenue side is just as critical as the claims side.

And finally on page -- and again, I'm sorry, Your Honor. I didn't raise this to begin with, but the point about revenue not being an issue. A great deal is made in the Debtor's report on page 18, paragraph 5 about Medicare reimbursements having been increased with regard to acute beds and swing beds.

But what the report doesn't point out is that this is primarily a skilled nursing facility. It has two -- it has two acute beds. It doesn't have -- again, and perhaps things have changed, but to my knowledge, it doesn't have an operating room or an operating room that has surgeries. So the fact that there may have been an increase in the Medi-Cal, Medicare reimbursement, it may be a non-issue if there are only two acute beds, and very rarely is more than one every used. So a 300 percent increase of zero is not much.

So these are just examples of the same explanations as to sources of revenue that we have heard before that the Debtor now, two and a half years into this case, hasn't really made any progress.

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Mr. Cotter himself, that the District takes a great deal of pride in hiring on page 8,
Mr. Cotter was brought to the District by HCCA. It wasn't some superman that was brought in to solve their problems.

So the point is, for two and a half years the District has had a great deal of time to talk about how they're going to find a way out of this. The truth is the disputes with my client don't require a Chapter 9 case to resolve. If there are no other creditors to worry about, this case can be dismissed, and those disputes can be handled outside of this courtroom, whether it's the malpractice claims or the claims that are serving the basis of the adversary, some of which are not even, I would argue, within the jurisdiction of this Court to resolve. And I believe there's been a jury trial request.

So the Chapter 9 isn't integral to resolving the claims going back and forth between

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the District, between the law firms, and among the
 7.
    law firms and my clients, but we continue to just
 2
    keep coming back; and I venture to say fees continue
 3
 4
    to rise.
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             THE COURT: Is there anything -- I'm going
    to bring you back to the point. Is there anything
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 7
    that can be done short of setting a bar date?
 8
             MR. BEDOYAN: A bar date for what, Your
 9
    Honor?
10
             THE COURT: Is there anything short of
11
    setting a bar date to file a plan that this Court
    can do? Would some sort of a court-ordered
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13
    mediator, in your view, have a better shot than a
14
    private mediator? Is there some -- I'm trying to
15
    figure out, is there any way that we can move this
    case forward with these resources to the Court?
16
17
             MR. BEDOYAN: At this time, until the files
    are reviewed by malpractice counsel, I don't think
18
19
    setting a bar date for mediation for a case that
20
    hasn't even been filed and may never be filed --
21
             THE COURT: I agree.
22
            MR. BEDOYAN: -- makes sense.
23
             THE COURT: But is there anything else we
24
    can do?
25
            MR. BEDOYAN: I can't think of anything
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1
    else.
           I mean, you've been quite generous in your
    multiple extensions of time for the Debtor to file a
 2
 3
    plan.
             THE COURT:
                         Okay.
 4
 5
             Mr. Walter?
 6
             MR. WALTER: I don't have anything to add,
    Your Honor.
 7
             THE COURT: Ms. McDow?
 8
             MS. MCDOW: Your Honor, just a couple of
 9
    points in response, and I'm going to limit it and be
10
    general for fear that my poor dead mother, God rest
11
    her soul, is going to be sued after this hearing.
12
13
             But the irony of this discussion that it is
14
    now -- the District was playing catch-up and for all
15
    the reasons that special counsel has put in a
16
    complaint that Mr. Walter has filed similar lawsuits
17
    in his Chapter 9. Those allegations are not mine.
18
    Those are third-party counsel. And now for HCCA to
19
    sit here and tell the Court that this case should be
20
    dismissed, when the District is playing catch-up
    because of the allegations, allegedly, that are in
21
22
    those complaints, is so disturbing I can barely -- I
23
    can barely stomach it, Your Honor.
24
             And of course, HCCA would love to have the
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case dismissed because they have -- they're the only

EXHIBIT H 124

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creditor who would benefit. They have an assignment right now of partial tax revenues, that if the case gets dismissed they will get until the end of time, until their 20 percent interest rate notes for \$2 million is paid off in full, which means the hospital will shut down. It's not a maybe. It is a certainty.

And that would be great for them. They could get our tax revenues, even if the hospital was closed. That's how it would look, okay. So of course they want dismissal, Your Honor.

Rather than trying to come to the table and really push for mediation, push for a global resolution, they're, again, in my opinion, going to make this difficult, put it on us so that Your Honor will dismiss the case. It's clear. It's what's happened today, Your Honor.

It's -- again, I've not been dealing with it, but my impression is that, that has been the response from HCCA, which is I think the case is going to be dismissed, so we don't need to -- we don't need to actively and in good faith engage in mediation. And now it's because there's a malpractice lawyer.

I can tell you that Foley & Lardner, who

has never represented an HCCA entity, is not going to (indiscernible). So I don't know if that's going to bring it to a close sooner, but I think that's going -- the response that HCCA gets from that I anticipate is not going to be well received in the sense that they thought it would, considering that they've never represented HCCA in any related entity, any of the entities that Baker represented. And it's actually fairly offensive that it's -- how it's been conducted, but that's neither here nor there.

Your Honor, I -- again, I understand where we are, but I can tell the Court without too much detail that I would ask you to look at, again, the allegations in the complaint, the allegations, Mr. Walter's complaints, the news. This is -- this is not a problem of the District's making, and we are now playing catch-up. We've done a very good job, but it's been a struggle, no doubt about it.

We are finally, in the past six months, eight months, really starting to turn around financially. That's what the numbers suggest. We have now come off with 50 percent Medicare withhold because hospital reports weren't submitted for a year and a half, almost two years. They just

weren't submitted, so that we could get our AR.

It was HCCA's responsibility to submit them, and none of them were submitted. So we are now playing catch-up. We are -- you know, have a million dollars in the bank, close to a million dollars. We are operating really well financially, but it has been a struggle; and it has been a catch-up that, again, is -- the irony of what I just had to listen to, and I'm sure that the Board had to listen to. The CEO is baffled.

So, Your Honor, again, I would -- I would ask the Court to set a bar date for mediation. I understand that, that's not something that you -- you know, that you're excited about doing. But I really think, given all the dynamics, it would really help push this case forward. And if we set it in December -- I don't want to be unfair to counsel, the malpractice counsel, but I also don't want it to be a repeat of we come back here and we're trying to do everything. We're turning everything around financially and trying to resolve the big claims and getting pushback and have that looked badly upon us again, Your Honor.

So I'm not sure where that leaves us, but I would ask, again, that perhaps a court-ordered

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1
    mediation, court-ordered mediator -- I don't know.
 2
    Unfortunately, I'm unfamiliar with the panel here.
    We have a good panel in the Central District. I'm
 3
 4
    there's equally good mediators on this Board's
 5
    panel, in this District's panel, and I think it
 6
    would really move the case forward.
 7
             And I'm not sure how long Mr. Walters would
 8
    need for his clients to get ready. I would imagine
 9
    before December we could talk about it. I would
    imagine that would be sufficient time. I don't mean
10
11
    to speak for him, but that we could -- that we could
12
    get the parties together.
13
             I did speak to Baker Hostetler, and she, at
14
    least the head of the group there, was ready to
15
    participate in mediation early September. So they
16
    are, again, in a place where they're prepared to
17
    come to the proverbial table, maybe the literal
18
    table there, Your Honor. So --
19
             THE COURT:
                         Okay.
20
             MS. MCDOW: Thank you, Your Honor.
21
             THE COURT: I think I'm going to set an
22
    interim monitoring date. I'm not going to set a bar
23
    date for mediation. I'm not sure that's feasibly
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24

25

realistic at this time, given the newness of these

claims that I'm hearing about. But I am going to

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1
    set a monitoring date, and we'll speak about it
 2
    again when the parties are a little further down the
    road. I'm thinking mid-October, and we'll come back
 3
    and see where it goes.
 4
 5
             What is our mid-October date? I think I
    have a dark week there sometime that I'm not
 6
7
    available. So mid to late October?
8
             THE CLERK: October 16th, Your Honor, or
9
    the 31st.
10
             THE COURT: I'm going to put this on for
    further status on October 16th at 1:30. I would
11
12
    like a status report a week ahead from the Debtor,
13
    also from Mr. Walter and Mr. Bedoyan with particular
14
   discussion of the adversaries and the litigation
    involving professional negligence, if any, and the
15
16
    status and the status of the mediation with the hope
17
    that we can be a little closer.
18
             MS. MCDOW: Your Honor, just so I
19
   understand, a joint status report from all three or
20
21
             THE COURT: No. Three are fine. But --
22
            MR. BEDOYAN: Thank you.
23
            MS. MCDOW: Thank you, Your Honor.
24
            MR. WALTER: Thank you.
25
             (HEARING CONCLUDED)
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I, Court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter. Julie Thompson, CET 1036

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September 17, 2018

Via E-mail & U.S. Mail

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Re: Benzeevi / HCCA et al.

Dear Mr. Price, Mr. Atkin and Ms. McDow

This letter addresses a related but separate issue to the Tolling Agreement raised in recent correspondence from the Sall Spencer firm regarding the situation with the Benzeevi Parties (HCCA, Dr. Benzeevi, Vi Healthcare and Tulare Asset Management) and Southern Inyo Healthcare District ("Inyo"). Based on the facts as set forth below, the Benzeevi Parties hereby request that Foley & Lardner and Ms. McDow withdraw from representing Inyo in the matter entitled, In re Southern Inyo Healthcare District, U. S. Bktcy Ct., E.D. Cal., Fresno Div. Case No. 2016-10015. Absent a voluntary withdrawal, HCCA will be moving to disqualify your firm and Ms. McDow from any further participation in the case.

The facts regarding the conflicts of interest that prohibit Ms. McDow and Foley from continuing as attorneys for Inyo in this case are set forth below. Prior to joining Foley, Ms. McDow was a partner for Baker Hostetler and integrally involved with representing the Benzeevi Parties and ultimately Inyo. Baker's relationship with the Benzeevi Parties spanned several years and covered multiple matters, in no way was this a limited representation by Baker on a discrete matter. As direct counsel for the Benzeevi Parties, Ms. McDow is presumptively in possession of all of the collective knowledge of Baker attorneys concerning the Benzeevi Parties. Most importantly, Ms. McDow was involved in drafting and negotiating the Management Services Agreement (the "MSA") between HCCA and Inyo, and then going on to lead the bankruptcy team for Inyo, while she and her firm continued to represent the Benzeevi Parties.

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The MSA has been one of the central topics of Inyo's bankruptcy proceedings. In the course of her representation of the Benzeevi Parties, Ms. McDow obtained substantial confidential client information from HCCA and the other Benzeevi Parties, in addition to any knowledge she is constructively in possession of due to her previous employment with Baker.

While Baker did obtain conflict waivers from certain of the Benzeevi Parties, these conflict waivers were not only deficient in failing to make the required Rule of Professional Conduct 3-310 disclosures, but actually recognized several key facts and make statements that further strengthens the case for disqualification. The letter from Baker to Inyo, HCCA and Dr. Benzeevi dated January 2, 2016 makes the following statements:

- "The Firm has represented HCCA in connection with the negotiation and drafting of a management service agreement with the District."
- "In connection with its representation of the Benzeevi Group, the Firm has had access to confidential information of the Benzeevi Group."
- "the Rules discourage the representation of a client where, by reason of the representation of the former client, the firm has obtained material confidential information."
- "However, the firm hereby advises you that unless otherwise required by law, it will not disclose any material confidential information of either party to the other, nor will the Firm use material confidential information of one party to the benefit of the other party."
- "a conflict of interest would exist if a dispute arose between the District and HCCA with respect to the Management Agreement Matters and if HCCA requests that the Firm represent its interests in connection with such dispute."
- "The District expressly acknowledges and agrees that the foregoing waiver will allow the Firm to continue to represent the interests of the Benzeevi Group in other matters, including but not limited to the Management Agreement Matters (including possible litigation or other forms of dispute resolution) and that the District will not seek to disqualify the Firm or any of its attorneys from representing the Benzeevi Group in any such matters (including the Management Agreement Matters) as a result of the Engagement of the Firm by the District in connection with the Chapter 9 Filing."
- "if the Firm determined that its continued representation of the District in the Chapter 9 Filing would require disclosure of material confidential information of the Benzeevi Group to the District, or vice versa, the Firm may elect to terminate its representation of the District in the Chapter 9 Filing."

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These statements were substantially duplicated in a later conflict waiver letter dated July 19, 2017 concerning Baker's representation of Vi Healthcare (a Benzeevi entity) in a loan transaction with Invo.

These letters fail to comply with Rule 3-310 in that, amongst other things, they misstate the applicable rules and law concerning conflicts of interest and fail to describe the reasonably foreseeable adverse consequences of a potential conflict such as, that if a conflict developed that Baker could decide to abandon the Benzeevi Parties who would then have to retain new independent counsel as would Inyo. Moreover, even if these letters were valid, Baker violated the stated terms of these agreements. The waivers stated that none of the Benzeevi Parties' confidential information would be used adverse to the Benzeevi Parties and also strongly implied that if a conflict arose, Baker would continue to represent the Benzeevi Parties and withdraw from its representation of Inyo. Instead, when a conflict arose, Ms. McDow and Baker, abandoned the Benzeevi Parties, used confidential information adverse to the Benzeevi Parties, and acted directly adverse to the Benzeevi Parties in assisting Inyo in attempts to terminate the MSA, going so far as to criticize the MSA that Baker drafted as one-sided in favor of HCCA. Then, when Ms. McDow left Baker and joined Foley, she continued her representation of Inyo as general insolvency counsel, now on behalf of Foley who substituted in to replace Baker, in the very bankruptcy proceedings that continued to challenge the Benzeevi Parties' actions and role regarding Invo. and in which HCCA is a creditor. As recently as August 29, 2018, Ms. McDow appeared at a Bankruptcy Court status conference where she continued to entrench her position adverse to HCCA by making allegations and statements adverse to HCCA. In this hearing, while admitting that it was in HCCA's interest that the Bankruptcy be dismissed, she resisted dismissal because it is in Inyo's interest that the proceedings continue. She also accused HCCA of delaying mediation in bad faith and that the problems that Inyo has had with submitting a feasible, confirmable plan are the fault of HCCA. While it is my understanding that you have taken the position that the retention of independent counsel somehow cleanses Ms. McDow of the conflict, this is not so. As you admit, because Ms. McDow has a duty to keep the Court informed of the bankruptcy matters she must continue to communicate with independent counsel as general insolvency counsel. Thus, this retention of separate counsel for certain aspects of the bankruptcy does not in any way operate as an ethical shield.

Ms. McDow's conflict has thus now become Foley's conflict since her fiduciary duties to the Benzeevi Parties survived termination of that relationship and are imputed to Foley. Ms. McDow is advocating for a global mediation, which she contends could be a significant funding source for the debtor. In that same mediation, McDow will participate as general insolvency counsel for Inyo, while she and her former firm will be parties with potential liability to both Inyo and the Benzeevi Parties. If that's not enough, McDow is also a material witness to the events that led to the dispute between the Benzeevi Parties and Inyo. These facts reveal the depth of the conflict facing Foley and Ms. McDow. On the one hand, Ms. McDow will attempt to minimize her own liability and that of Baker in these negotiations adverse to the Benzeevi Parties, but then on the other hand, she must try to maximize Inyo's recovery in these

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negotiations. While not a concern for the Benzeevi Parties, how would Inyo know that Ms. McDow didn't settle with the Benzeevi Parties at Inyo's expense in order avoid or reduce her own professional liability and the liability of the Foley and Baker firms. This is a direct and irreconcilable conflict of interest which was never described to the Benzeevi Parties or waived. The fact that Mr. Shinbrot was brought in to represent Inyo in the adversary action does not change the fact that as bankruptcy counsel, Ms. McDow is still taking positions adverse to her former client in acting as the architect of Inyo's chapter 9 plan that relies heavily on extinguishing multi-million dollar claims asserted by HCCA and Vi Healthcare and recovering additional millions from those very same two entities, Mc Dow is presumptively if not actually using confidential information in advancing the objectives of Inyo.

Rule 3-310(E) of the CRPC (Avoiding the Representation of Adverse Interests) articulates the well-established ethical prohibition against accepting representation of parties with adverse interest when confidential information is in the possession of the attorney:

A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client, where by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

Please also note that new Rule of Professional Conduct 1.9, which will become effective November 1, 2018, closely mirrors the model Rules of Professional Conduct, and prohibits representation adverse to a former client. The comments note that "a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client." New Rule 1.9. This new rule also incorporates the concept stated in New Rule 1.7 that certain conflicts are un-waivable, such as when an attorney represents a client asserting claims in direct adversity to a former client. See New Rule 1.7(d).

An attorney's fiduciary duties to a former client continues after termination of employment, at least to the extent that the attorney must maintain the confidentiality of all client information and must not act adversely to the former client in matters involving the former representation. Oasis West Realty, LLC v. Goldman (2011) 51 Cal. 4th 811, 821 ("an attorney is forbidden to do either of two things after severing [the] relationship with a former client. [The attorney] may not do anything which will injuriously affect [the] former client in any matter in which [the attorney] formerly represented [the client] nor may [the attorney] at any time use against [the] former client knowledge or information acquired by virtue of the previous relationship.""); Styles v. Mumbert (2008) 164 Cal. App. 4th 1163, 1167 ("So fundamental is this precept that an attorney continues to owe a former client a fiduciary duty even after the termination of the relationship. For example, an attorney is forever forbidden from using, against the former client, any information acquired during such relationship, or from acting in a way which will injure the former client in matters involving such former representation.")

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Matthew J. Price, Esq. September 17, 2018
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An attorney cannot escape this continuing duty by switching firms. When the attorney switches firms, that duty is then imputed to the firm, as a whole. City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839, 847–848 ("an attorney's conflict is imputed to the law firm as a whole on the rationale 'that attorneys, working together and practicing law in a professional association, share each other's, and their clients', confidential information."); People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc. (1999) 20 Cal.4th 1135, 1146 ("a presumption that an attorney has access to privileged and confidential matters relevant to a subsequent representation extends the attorney's disqualification vicariously to the attorney's entire firm.") New Rule of Professional Conduct 1.10 incorporates this rule of imputation.

In cases of successive adverse representation, where a lawyer personally provided legal services to a former client, "the only question is whether there is a substantial relationship between the subject of the prior representation and the subject of the current representation." Fiduciary Trust Int'l of Cal. v. Superior Court (2013) 218 Cal.App.4th 465, 479. When there is a substantial relationship, "access to confidential information by the attorney, in the course of the first representation (relevant, by definition, to the second representation) is presumed and disqualification of the attorney's representation of the second client is mandatory; indeed, the disqualification extends vicariously to the entire firm." Flatt v. Superior Court (1994) 9 Cal.4th 275, 283 (emphasis in original); Jessen v. Hartford Cas. Ins. Co. (2003) 111 Cal.App.4th 698, 706. Because here, the representation of the Benzeevi Parties, with regard to the MSA and the structuring of the loan transactions with Vi Healthcare and the bankruptcy proceedings, are substantially related, access to relevant confidential information by Foley is presumed.

While some cases (and New Rule 1.10) have recognized that imputation will not be presumed, and disqualification of a successive firm may not be warranted under certain circumstances, if the conflicted attorney was not substantially participating in a related matter and is screened from representation of an adverse client, here that potential exception does not apply. As to Inyo, Ms. McDow substantially participated in the MSA and the Vi Healthcare formation and its loan transactions with Inyo, and Foley not only did not establish ethical screening to shield Foley from Ms. McDow's conflict, it affirmatively supported Ms. McDow in continuing to represent Inyo in violation of her duties to the Benzeevi Parties. See, e.g., Kirk v. First American Title Ins. Co. (2010) 183 Cal.App.4th 776, 801 "(we should presume knowledge is imputed to all members of a tainted attorney's law firm. However, we conclude that, in the proper circumstances, the presumption is a rebuttable one, which can be refuted by evidence that ethical screening will effectively prevent the sharing of confidences in a particular case.")

Under these facts and the applicable case law, Foley and Ms. McDow are prohibited from continuing to represent Inyo and must withdraw. While we anticipate that you may claim that the timing of this request six months after Foley substituted into this case operates as a waiver of the Benzeevi Parties' rights to disqualify Foley and Ms. McDow, absent both inexcusable and unjustifiable delay and extreme prejudice, a client is not barred by laches from seeking

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disqualification. Western Continental Operating Co. v. Natural Gas Corp. (1989) 212 Cal.App.3d 752, 763-764. Ms. McDow was put on notice almost immediately after she withdrew from representing the Benzeevi Parties that the Benzeevi Parties objected to her representation of Inyo. If you have any facts or cases supporting that a six-month delay, when the attorney was put on notice months earlier of the client's objections, is inexcusable and that Inyo would suffer extreme prejudice please provide that information.

The Benzeevi Parties hereby request that Foley & Lardner withdraw from representation of Inyo in the bankruptcy case as well as to any matter involving the relationship or transactions between the Benzeevi Parties and Inyo. If you agree to this withdrawal we can discuss a reasonable time for Inyo to retain another firm. Otherwise the Benzeevi Parties will promptly be moving to disqualify Foley and Ms. McDow. We will give you until September 29, 2018 to respond to this letter. Otherwise, we will assume we will need to proceed with the disqualification motion.

Sincerely,

Hagop T. Bedoyan

HTB:tb

cc: Jeffrey S. Shinbrot, Esq. Brandon N. Krueger, Esq. Lara Callas, Esq.

EXHIBIT "J"

RESUME OF ROBERT L. KEHR

ROBERT L. KEHR - Cornell University (B.A., 1966); Columbia University (J.D., 1969); Member: California State Bar Commission for the Revision of the Rules of Professional Conduct (2005-2017); California State Bar Standing Committee on Professional Responsibility and Conduct (Member: 1996-2001, Chair, 1999-2000 and Special Advisor: 2000-01); Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association (Member: 1981-Present and Chair: 1986-87); Evaluation of Professional Standards Committee of the Los Angeles County Bar Association (Member: 1988 - merged into PREC); Member: American Law Institute; Member: Association of Professional Responsibility Lawyers; Adjunct Professor - Loyola Law School; Author: "The Lawyer as Director" to be published in the April 2018 Los Angeles County Bar Updates; "The Lawyer as Escrow Holder" published in the March 2018 Los Angeles County Bar Updates; "Lawyer Ethics in Real Estate Transactions" - ABA Probate & Property, Vol. 26, No. 2 (Mar/Apr 2012) (with Prof. Roger Bernhardt); "The Lawyer as Scrivener" - Los Angeles Lawyer (2011), Vol. 34, No. 6, p. 20; "Midcourse Corrections: Being Professionally Responsible in Property Transactions" 34 CEB Real Property Law Reporter 123 (July 2011) (with Prof. Roger Bernhardt); "When a Lawyer-Mediator Prepares the Settlement Agreement" - ABA/BNA Lawyers' Manual on Professional Conduct (2011), Vol. 27, No. 12; "Principles or Rules: What is the Best Approach to Regulation?" Los Angeles Daily Journal, August 12 and August 13, 2010; "Lawyer Error: Malpractice, Fiduciary Breach, or Disciplinable Offense?" 29 W.St.U.L.Rev. 235 (2002); "Update on Conflicts of Interest" - Los Angeles Lawyer (2000), Vol. 23, No. 4 p. 33; "Ruling on the Rules" - Los Angeles Lawyer (1998), Vol. 21 No. 4 p. 37; Peck & Kehr, "Ruling on the Rules" - Vol. 21 No. 4, p. 37 Los Angeles Lawyer (1998); "The Changing Law of Lease Assignments" - Real Estate Review, Vol. 11 No. 2 p. 54, (1981); "Lease Assignments: The Landlord's Consent" - 55 California State Bar Journal 108 (1980); "The Application of Green v. Superior Court to Non-Residential Realty" - 1 Los Angeles Lawyer 30 (1979). Arbitrator: Los Angeles County Bar Attorneys Fee Arbitration Committee, (1980-Present).

Currently practice limited to transactional matters and consultation and expert testimony concerning legal ethics and standard of care issues. Frequent lecturer on lawyer responsibilities.

Robert L. Kehr was a speaker or one of the panelists at the following programs:

- 1. "Disclosure Pitfalls for Lawyers: Partners, Brokers, and Other Fiduciaries in Real Estate Transactions." This program was given under the auspices of the Real Estate Committee of the Los Angeles County Bar Association on May 18, 1995.
- 2. "Breaking Up is Hard to Do: Ethical Issues in Lateral Transfers and Law Firm Dissolutions." This program was given under the auspices of the Los Angeles County Bar Association Committee on Professional Responsibility and Ethics on June 22, 1995.

- 3. "Engagement, Disengagement, and Non-Engagement Letters." This program was given under the auspices of the Business Law Section of the State Bar of California as part of the annual spring program on June 23, 1995.
- 4. "Managing Civil Conflicts of Interest In and Out of Court." This program was given under the auspices of the Los Angeles County Bar Association on October 21, 1995.
- 5. "Conflicts of Interest." This program was sponsored by the California Continuing Education for the Bar on January 23, 1997.
- 6. "The Application of Advertising & Solicitation Rules to the Internet". This program was sponsored by the Law Firm of Jackson & Lewis on March 18, 1997.
- 7. "Recognizing and Avoiding Conflicts of Interest." This program was presented to the Los Angeles Consumer Lawyers Association on July 10, 1997.
- 8. "Recent Developments in Legal Ethics." This program was presented to the California State Bar at its September 13, 1997 annual meeting.
- 9. "Ethics Issues in Buying and Selling Businesses." This program was presented by CLE International as part of a 2-day program on December 4, 1997.
- 10. "Conflicts: Traps and Consequences for Lawyer and Insurers." This program was presented by the Assoc. of So. Cal. Defense Counsel on February 5, 1998
- 11. "Legal Ethics in Land Use Matters". This program was presented by CLE International on April 30, 1998.
- 12. "Recent Developments in Professional Responsibility." This program was presented to the California State Bar at its October 1-4, 1998 annual meeting.
- 13. "What Every Lawyer Needs to Know About Conflicts of Interest." This program was presented to the California State Bar at its October 1-4, 1998 annual meeting.
- 14. "Ethics Issues in Buying and Selling Businesses." This program was presented by CLE International as part of a 2-day program on February 26, 1999.
- 15. "Methods for Identifying and Avoiding Conflicts." This program was presented to the California State Bar at its October 2, 1999 annual meeting.
- 16. "Conflicts of Interest." This program was presented to the Sonoma County Bar Association on November 30, 1999.
- 17. "Ethics Issues in Cutting Edge Fee Arrangements." This program was presented at the Beverly Hills Bar Association on April 29, 2000.

- 18. "The Ethics of Taking Stock for Services." This program was presented at the Annual Statewide Ethics Symposium on June 17, 2000, at Western States University School of Law.
- 19. "Methods for Identifying and Avoiding Conflicts." This program was presented to the California State Bar at its September 2000 annual meeting.
- 20. "Conflicts of Interest: An In-Depth Analysis for Corporate and Private Counsel." This program was presented by PLI on December 14, 2000 (Los Angeles) and January 12, 2001 (San Francisco).
- 21. "Navigating the Ethical Maze of Elder Law, Estate Planning and Fiduciary Conflicts: Practical Strategies both to Serve our Clients and Avoid Malpractice" which was presented to the Beverly Hills Bar Association on May 30, 2001.
- 22. "Non-Consensual Ethics Screening for Private Lawyers" which was presented at the Annual Statewide Ethics Symposium on June 16, 2001, at Western States University School of Law.
- 23. "A Review of Fees, Fee Agreements, Fee Collections, Unconscionability, and Non-Standard Fee Arrangements" which was presented to the State Bar of California at its September 8, 2001 annual meeting.
- 24. "The Going Rate: Entertainment Economics by the Numbers" [legal ethics aspects] which was presented at the USC/Beverly Hills Bar Association 47th Annual Entertainment Law Institute on September 15, 2001.
- 25. "Recognizing and Avoiding Conflicts of Interest" which was presented by CEB on November 7 (San Diego), November 17 (Costa Mesa), and December 8, 2001 (Los Angeles).
- 26. "Conflicts of Interest: An In-Depth Analysis for Corporate and Private Counsel" which was presented by PLI on December 14, 2001 (San Francisco) and January 11, 2002 (Los Angeles).
- 27. "Legal Ethics 2002-2003 Current Developments" which was presented by PLI (Los Angeles) on January 10, 2003.
- 28. "The Role and Responsibility of Lawyers" which was presented at Pepperdine Law School, MDR program on January 21, 2003.
- 29. "Ethics" which was presented at the 15th Annual Educational Conference of the California Alliance of Paralegal Association program on June 21, 2003.
- 30. "Advanced Problems in Conflicts of Interest" which was presented at the Annual Statewide Ethics Symposium on June 28, 2003, at Whittier Law School, Costa Mesa.

- 31. "Buying & Selling a Business" which was presented by Sterling Education Services on November 14, 2003 in Pasadena.
- 32. "Legal Ethics Current Developments" which was presented by PLI on January 9, 2004, in Los Angeles.

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- 33. "The Essentials of Legal Ethics: The Lawyers' Responsibilities and Conflicts of Interest" which was presented by CLE International in Los Angeles on January 23, 2004.
- 34. "The Role and Responsibility of Lawyers" which was presented at Pepperdine Law School, MDR program on February 2, 2004.
- 35. "An Attorney's Duties to the Court and Opposing Counsel" which was presented by Consumer Attorneys of Los Angeles Annual Las Vegas Convention on August 29, 2004.
- 36. "Legal Ethics Current Developments" which was presented by PLI on January 14, 2005, in Los Angeles.
- 37. "The Ethics of Referral Fees" which was presented by the Southern California Council of Elder Law Attorneys on February 9, 2005.
- 38. "The Role and Responsibility of Lawyers" which was presented at Pepperdine Law School, MDR program on March 2, 2005.
- 39. "Relationship Agreements" which was presented by The Seminar Group on March 4, 2005, in Los Angeles.
- 40. "Ethics and Conflict of Interest" which was presented at The Family Law Study Group on May 10, 2005, in Los Angeles.
- 41. "Legal Ethics for Real Estate Attorneys" which was presented by the Los Angeles County Bar Association and the American Bar Association on December 7, 2005, in Los Angeles.
- 42. "The Work of the Commission for the Revision of the Rules of Professional Conduct" which was presented at the Annual Statewide Ethics Symposium on May 6, 2006, at Santa Clara Law School.
- 43. "Legal Ethics in ADR" which was presented at the ADR conference at Pepperdine Law School on May 20, 2006.
- 44. "Legal Ethics Issues of the California Environmental Quality Act" which was presented by CLE International on August 14, 2006, in Los Angeles.

45. "Legal Ethics" which was presented by CEB on November 18, 2006, in Anaheim and December 9, 2006, in Los Angeles.

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- 46. "Ethical Issues for Business Lawyers" which was presented by the California Bankers Association's Bank Counsel Seminar on March 30, 2007, in Dana Point, California.
- 47. "Ethics Update: The Latest Recent Developments and Proposed New Rules from the California Rules Revision Commission" which was presented by CEB on November 16 and December 8, 2007 in Anaheim and Los Angeles.
- 48. "Potpourri of Ethics: Conflicts and Updates on Important Developments" which was presented by the Beverly Hills Bar on November 30, 2007, in Beverly Hills.
- 49. "Residential Landlord-Tenant Law" (legal ethics aspects) which was presented by Sterling Education Services on March 27, 2008, in Santa Monica.
- 50. "Nuts and Bolts of Ethics" which was presented by The California Political Attorneys Association on September 6, 2008, in Universal City.
- 51. "What Every Lawyer Needs to Know About the Upcoming Changes to the Rules of Professional Conduct" which was jointly sponsored by the Rules Revision Commission and the Inns of Court and was presented at the State Bar Convention on September 25, 2008, in Monterey, California.
- 52. "Ethics Update: The Latest Recent Developments and Proposed New Rules from the California Rules Revision Commission" which was presented by CEB on December 5, 2008, in Los Angeles.
- 53. "Re-Forming the California Rules of Professional Conduct" which was presented at the State Bar 13th Annual Ethics Symposium on May 2, 2009, in San Diego.
- 54. "Ethics Update 2010: Recent Developments and Proposed New Rules from the California Rules Revision Commission" which was presented by CEB on January 15, 2010 in Orange County and on January 29, 2010, in Los Angeles.
- 55. "Criminal Defense and the New Rules of Professional Conduct" which was presented by the Los Angeles County Bar Association on January 16, 2010, in Los Angeles.
- 56. "The ABCs of Conflicts of Interest" which was presented in Temecula, California on January 30, 2010.
- 57. "Landlord-Tenant Law Update" which was presented by Sterling Education Services in Pasadena on June 17, 2010.

- 58. "Attorney Fee Agreements & Fee Disputes: Basics and Recent Developments" which was presented by CEB in Los Angeles on August 20, 2010.
- 59. "The Proposed New California Rules of Professional Conduct" which was presented by BNA on November 11, 2010 as a webinar.
- 60. "Ethics Update 2011: Recent Developments and Proposed New Rules from the California Rules Revision Commission" which was presented by CEB on January 21, 2011 in Orange County and on January 28, 2011, in Los Angeles.
- 61. "Foreshadowing: California's New Proposed Rules of Professional Conduct" which was presented by California Society for Healthcare Attorneys on April 10, 1011 in Los Angeles.
- 62. "The Proposed New California Rules of Professional Conduct" which was presented by BNA on October 19, 2011 as a webinar.
- 63. "A Selected Introduction to Contingency Fees, Non-Refundable Fees, and Lawyer-Client Business Transactions" which was presented on November 30, 2011 as an in-house seminar at King, Holmes, Paterno & Berliner, LLP in Los Angeles.
- 64. "Advance Consents to Conflicts of Interest" which was presented on December 3, 2011 by the Los Angeles County Bar Association in Los Angeles.
- 65. "Ethics Update 2012: Recent Developments and Proposed New Rules from the California Rules Revision Commission" which was presented by CEB on January 20, 2012 in Orange County and on January 27, 2012, in Los Angeles.
- 66. "Transactional Conflicts of Interest" which was presented to USC Law School LLM students on February 6, 2012.
- 67. "Navigating Common Ethical Dilemmas," which was presented on May 17, 2012 by the Los Angeles Paralegal Association at Abraham Lincoln University School of Law in Los Angeles.
- 68. "The No-Contact Rule: Up Close and Personal," which was presented on May 19, 2012 at the State Bar's Statewide Ethics Symposium to be held at Hastings School of Law.
- 69. "Attorney-Client Privilege" which was presented on June 13, 2012 by the Kern County Bar Association at the Petroleum Club in Bakersfield, California.
- 70. "Ethics for Criminal Defense Lawyers" which was presented on August 30, 2012 as a firmwide teleconference for the Kavinoky Law Firm.

- 71. "Ethics Update 2013: Recent Developments and Proposed New Rules from the California Rules Revision Commission" which was presented by CEB on January 18, 2013 in Los Angeles and on January 25, 2013 in Orange County.
- 72. "Ethical Rules for Healthcare Lawyers: What You Don't Know Can Harm You (And Your Clients)" which was presented by the California Society of Health Attorneys on April 13, 2013 in Newport Beach, California.
- 73. "Legal Ethics, Recent Developments & Emerging Rules" which was presented by the Association of Business Trial Lawyers on May 7, 2013 in Los Angeles.
- 74. "Avoiding Conflicts in Representing a Closely-Held Business" which was presented by CEB as a webinar on September 24, 2013.
- 75. "Selected Issues in Attorneys Fees" which was presented on December 7, 2013 by the Los Angeles County Bar Association in Los Angeles.
- 76. "OCBA Ethics Update 2013" which was presented by the Orange County Bar Association on December 14, 2013 in Newport Beach.
- 77. "Legal Ethics in Probate and Trust Matters" which was presented on May 14, 2014 by the Kern County Bar Association in Bakersfield, California.
- 78. "An Introduction to Conflicts of Interest" which was videotaped on June 19, 2014 for AttorneyCredits.com.
- 79. "Legal Fees, Fee Agreements, and Fee Collectibility" which was presented by Concord Law School on June 21, 2014 in Pasadena.
- 80. "Recent Developments in California Legal Ethics" which was videotaped for CEB on July 19, 2014.
- 81. "Ethical Issues in Law Office Marketing" which was presented by the Beverly Hills Bar Association on November 5, 2014.
- 82. "Conflicts of Interest" which was presented by the Los Angeles County Bar Assoc. Prof. Responsibility and Ethics Comm. on December 6, 2014 in Los Angeles.
- 83. "OCBA Ethics Update 2014" which was presented by the Orange County Bar Association on December 10, 2014 in Irvine.
- 84. "Conflicts of Interest and Disqualification Arising from Prior Client Representations: What Are the Rules?" which was presented by COPLI as a webinar on January 13, 2015.

- 85. "Selected Issues in Legal Ethics for Health Lawyer" which was presented by the Los Angeles County Bar Section on Health Law on January 15, 2015.
- 86. "Probate Symposium" which was presented by the San Bernardino County Bar Association on May 27, 2015.
- 87. "Selected Issues in Legal Ethics" which was presented by the California Association of Realtors on August 6, 2015.
- 88. "The Past Year in Review: Recent Developments in the Law of Lawyering" which was presented by the State Bar's Committee on Professional Liability Insurance at the State Bar Annual Meeting in Anaheim on October 10, 2015.
- 89. "Recent Developments in California Legal Ethics" which was videotaped for CEB on December 1, 2015.
- 90. "OCBA Ethics Update 2015" which was presented to the Orange County Bar Association on December 5, 2015.
- 91. "Ethical Keys: Client Identity, Conflicts, and More", which was presented to the Group Legal Services meeting of the California Teachers' Association in Costa Mesa on February 6, 2016.
- 92. "Doing Business with Your Client: The Problems, Pitfalls and Issues in Lawyer-Client Transactions", which was presented to the Southern California Business Litigation Inn of Court on March 3, 2016.
- 93. "Common Mistakes Made in Drafting Contingency Fee Agreements and How to Avoid Them", presented by COPLI as a webinar on April 19, 2016.
- 94. "The Formation, Scope, and Termination of a Lawyer-Client Relationship", presented by COPLI on September 29, 2016 at the State Bar annual meeting.
- 95. "OCBA Ethics Update 2016" presented to the Orange County Bar Association on December 3, 2016.
- 96. "What you don't know, but should, about the New California Rules of Professional Conduct" presented at the Annual Statewide Ethics Symposium on April 21, 2017 at Loyola Law School, Los Angeles.
- 97. "OCBA Ethics Update 2017" presented to the Orange County Bar Association on September 28, 2017.
- 98. "Conflicts Analysis in the Representation of Governmental Entities and Agencies", presented in-house to Meyers Nave on May 22, 2018.

- 99. "Brave New World: What Business Lawyers Need to Know about the Sea Change to new Rules of Professional Conduct", presented to the Beverly Hills Bar Association on July 12, 2018.
- 100. "The New Rules of Professional Conduct", presented to the Los Angeles County Bar Association on August 21, 2018.
- 101. "California's New Rules of Professional Conduct: BE PREPARED!" to be presented to the Orange County Bar Association on October 17, 2018.
- 102. "An Introduction to California's New Rules of Professional Conduct" to be presented in-house to Klein DeNatale Goldner on October 27, 2018 at Bakersfield.

EXHIBIT "K"

LIST OF MATERIALS

- 1. Baker Hostetler conflict letter dated January 2, 2016
- 2. Baker Hostetler conflict letter dated July 19, 2017
- 3. Declaration of Ashley M. McDow in Support of the Emergency Motion (1) for Authority to Immediately Terminate HCCA Management Agreement, etc. filed 10/17/17
- 4. Management Services Agreement between HealthCare Conglomerate Associates, LLC and Southern Inyo Healthcare District dated January 2, 2016
- Baker Hostetler engagement letter to Southern Inyo Healthcare District dated January 2,
 2016
- 6. Reporter's transcript of October 17, 2017 hearing in this matter
- 7. Draft of disqualification motion
- 8. Draft of Declaration of Yorai Benzeevi, M.d. in Support of Motion to Disqualify Ashley M. McDow and Foley & Lardner as Attorneys for Debtor

EXHIBIT K 146

1 **PROOF OF SERVICE** STATE OF CALIFORNIA, COUNTY OF TULARE 2 The undersigned declares: 3 I am a citizen of the United States. My business address is 221 S. Mooney Blvd., 4 Room 224, Visalia, California 93291. I am over the age of eighteen years and not a party to the 5 within action. 6 On the date set forth below, I caused the REQUEST FOR JUDICIAL 7 NOTICE; EXHIBITS in the matter of YORAI BENZEEVI vs SUPERIOR COURT OF THE 8 COUNTY OF TULARE, to be served on: 9 ATTORNEY ELLIOT R. PETERS 10 KEKER, VAN NEST & PETERS LLP **633 BATTERY STREET** 11 SAN FRANCISCO, CA 94111-1809 FAX: (415) 397-7188 12 ATTORNEYS OLIVER W. WANGER AND PETER M. JONES 13 WANGER JONES HELSLEY 14 265 E RIVER PARK CIRCLE, STE 310 **FRESNO, CA 93720** 15 FAX: (559) 233-9330 16 ATTORNEY KEVIN RONNEY HAMMERSCHMIDT LAW CORP 17 2445 Capitol St, Ste 150 Fresno, CA 93721-2242 18 FAX: (559) 233-4333 19 20

Mail XX Interoffice	Mail Overnight Mai	l Fax
Hand Delivered Cer	tified Mail Pick-up	In Court
I declare under penalty of perjury that the foregoing is true and correct.		
Executed on January 7, 2019	9.	

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Supervising legal Office Assistant